ENGLISH

REAL PROPERTY LAW

PRINTED BY SPOTTISWOODE AND CO.
FOR
JAMES THORNTON, OXFORD
London: Simpkin, Marshall, & Co.

AN ANALYSIS OF

THE ENGLISH LAW OF REAL PROPERTY

CHIEFLY FROM BLACKSTONE'S COMMENTARY

BY

GORDON CAMPBELL

OF THE INNER TEMPLE, BARRISTER-AT-LAW; M.A., LATE SCHOLAR EXETER COLLEGE, OXFORD, M.A., LL.D. TRINITY COLLEGE, CAMBRIDGE: AUTHOR OF 'AN ANALYSIS OF AUSTIN'S JURISPRUDENCE' AND OF 'A COMPENDIUM OF ROMAN LAW'

SECOND EDITION

Oxford

JAMES THORNTON, HIGH STREET

1887

CONTENTS.

TABLE

OF THE PRINCIPAL STATUTES RELATING TO THE LAW OF REAL PROPERTY.

13 Edw. I. c. 1. De Donis.
18 Edw. I. c. 1. Quia Emptores.
27 Henry VIII. c. 10. Statute of Uses.
27 Henry VIII. c. 16. Statute of Enrolments.
32 Henry VIII. c. 1. Statute of Wills.
12 Car. II. c. 24. Abolition of Military Tenures.
29 Car. II. c. 3. Statute of Frauds.
9 George II, c. 36. Mortmain.
3 & 4 William IV. c. 74. Fines and Recoveries.
3 & 4 William IV. c. 105. Dower Act.
3 & 4 William IV. c. 106. Inheritance Act.
1 & 2 Vict. c. 110. Judgment Debts.
27 & 28 Vict. c. 112. Judgment Debts.
33 & 34 Vict. c. 93. Married Women's Property Act, 1870.
37 & 38 Vict. c. 78. Vendors and Purchasers' Act. 1874.
38 & 39 Vict. c. 87. Land Transfer Act, 1875.
38 & 39 Vict. c. 92. Agricultural Holdings Act, 1875.
40 & 41 Vict. c. 18. The Settled Estates Act, 1877.
44 & 45 Vict. c. 41. The Conveyancing Act, 1881.
45 & 46 Vict. c. 38. The Settled Land Act, 1884.

ANALYSIS

OF

BLACKSTONE'S LAW OF REAL PROPERTY

INTRODUCTION.[1]

THE PLACE OF THE LAW OF REAL PROPERTY IN BLACKSTONE'S SYSTEM.

THE arrangement which seems to have been intended by Blackstone in his Commentaries is as follows:—

He first expressly distinguishes Law regarding Rights from Law regarding Wrongs, a distinction which is practically equivalent to a division of the Corpus juris into the Law regarding Primary and Secondary (or Sanctioning) Rights.

The Law of Primary Rights is further subdivided by Blackstone into the so-called Jura personarum, or Law regarding those rights which concern or are annexed to the persons of men, and the Jura rerum, which he describes as the 'Right which a man may acquire over things unconnected with his person.'

[1] The writer of the Analysis is entirely responsible for the form and matter of the Introduction.

It has been objected that Blackstone's descriptions of the terms Jura personarum and Jura rerum are incorrect; but if we apply to those terms the meanings usually attached to them by jurists—in other words (*a*) if we take out of the class of Primary Rights those which attach to persons as members of society standing in certain definite relations to each other, and if to these rights we apply the term Jura personarum (=Law of Status), and if (*β*) we reserve the title Jus rerum for the body of primary rights after those regarding certain forms of status have been subtracted —then, with slight exceptions, we should find that the classification of Blackstone would agree with that of the analytical jurists.

[No explanation, however, would seem to account for the position of the so-called 'absolute rights of persons' under the head of Jura personarum; the rights referred to would appear to be rather rights analogous to rights of ownership, only differing from such rights in not having a definite and tangible object upon which to take effect.]

The Jus rerum is conversant with dominion or property.

Property may be either Real or Personal: Real Property consists of inheritable rights, which may be subdivided into Corporeal and Incorporeal hereditaments.

Personal property consists of such rights as are not inheritable, but which devolve on the death of the owner intestate to the Administrators and not to the heir.

ANALYSIS OF BLACKSTONE'S COMMENTARY.

BOOK II. CHAPTER I.—(Of Property in general.)

THE ORIGIN OF PROPERTY.

BLACKSTONE'S theory of the origin of property is briefly as follows:—

The surface of the earth being originally the property of no man became the property of the person who first began to use and occupy it; the *right of possession* continuing for the same time only that the *act of possession* lasted. No part of the ground was the permanent property of any man in particular, yet whoever was in the occupation of any determined spot acquired a sort of ownership, but the moment this occupant quitted the use or occupation of it another might seize the land without injustice. The exigencies of civilised life led to the development of the institution of property from the primitive form of occupancy.

[Sir Henry Maine, in criticising this theory of the origin of property, expresses his opinion that Blackstone's statement implies what is exactly the reverse of the truth. The notion of occupancy, in the sense of 'the *advised* assumption of physical possession' (or as Austin puts it, 'the apprehension of a thing which has no owner *with the intention of* acquiring *it as one's*

own'), is far from being a characteristic of early societies, but is in all probability the growth of a refined jurisprudence and of a settled condition of the Laws. In other words, the theory of occupancy presupposes (*a*) the institution of property, (*β*) the necessity that this institution should be universal: the inference from these suppositions is, that, as everything should have an owner the occupant is allowed to acquire ownership in default of any owner claiming by a better title.]

PRELIMINARY DEFINITIONS.

Dominion or property.

Ownership or dominium is a species of jus in rem over a particular object; a right or rights residing in a person, and availing against other persons universally or generally, and giving to the person entitled a right to use the object in a manner or to an extent which is indefinite though not actually unlimited.—*Austin's Jurisprudence*, Lecture XIV.

The rights of the dominus or owner are summed up in the Jus utendi or right of using, Jus fruendi or right of taking the produce, and Jus abutendi or right of consuming the thing if capable of consumption.

The following brief definition of ownership or dominium may be found useful:—'**Dominion or ownership consists of the sum of the rights in rem which may legally be exercised over any given object.**'

REAL PROPERTY.

Things the subject of dominion or property are of two classes:—

A. Things Real.

B. Things Personal.

Things Real are such as are permanent, fixed, and immoveable, which cannot be taken out of their place, as lands and tenements.

Things Personal are goods, money, and all other moveables which may attend the owner's person wherever he goes.

[**Ground of the distinction between Real and Personal property.**

Real property was such as could be recovered by a real action.

Personal property was such as could only be recovered by a personal action.

The distinction implied above is probably not earlier than the middle of the seventeenth century. The growth in value and importance of those objects which did not come under the head of real property caused the distinction to gain increased prominence.]

Blackstone's arrangement of the Law of Real Property is as follows:—

He treats of—

A. THINGS REAL.

B. THE TENURES BY WHICH THEY ARE HOLDEN.

C. THE ESTATES WHICH MAY BE HAD IN THEM.

D. THE TITLE TO THEM, AND THE MANNER OF ACQUIRING AND LOSING IT.

CHAPTER II.—(Of Real Property and first of Corporeal hereditaments.)

A. THINGS REAL.

The principal forms of things real are—

1. Lands; 2. Tenements; 3. Hereditaments.

Land includes not only the surface of the earth, but everything above and beneath it.

[A grant of lands will accordingly pass all minerals, &c., below the surface as well as all buildings and structures raised upon it.

The maxim is Cujus est solum ejus est usque ad cœlum.

Examples:—By the grant of a house the grantee would not take the land upon which it was built, nor would he be entitled to the minerals under the house; by a grant of the land he would take both the minerals and the house.

The grantee of a pond or river would merely take the right of fishing therein.

The word 'pool,' however, used in a conveyance seems to include the land as well as the water covering it.—*Co. Lit.*]

Tenements.

Tenements are such things as are capable of being holden, *i.e.* of being subjects of tenure, whether they be of a substantial and sensible or of an unsubstantial ideal kind.

In ordinary language the word 'tenement' is usually applied to houses and other buildings.

Hereditaments.

Hereditaments consist of whatsoever things may be inherited, whether corporeal or incorporeal, real, personal, or mixed.

The term hereditament, therefore, includes tenements, as 'tenements' include 'lands.'

Hereditaments are of two classes—(I) Corporeal, and (II) Incorporeal.

I.—CORPOREAL HEREDITAMENTS.

Corporeal hereditaments are such as affect the senses, such as may be seen and handled. They consist wholly of substantial and permanent objects, all of which may be comprehended under the general denomination of *land* only. (*V. supra*, definition of 'land.')

Incorporeal hereditaments are not the objects of sensation; they can neither be seen nor handled; are creatures of the mind, and exist only in contemplation; they are rights issuing out of things corporeal (whether real or personal), or concerning or annexed to, or exercisable within, the same.

Austin's criticism on the distinction between corporeal and incorporeal hereditaments. Lect. XIII. Certain rights are styled incorporeal hereditaments, and are opposed by that name to hereditaments corporeal. That is to say, rights of certain kinds are absurdly opposed to the things (strictly so called) which are the objects of rights of other kinds. A corporeal hereditament is the thing itself which is the subject of the right; an incorporeal hereditament is not the subject of the right, but the right itself. The subject of the right called an incorporeal hereditament is often corporeal, *e.g.* the produce which is the subject of the right of tithe.

CHAPTER III.—(Of Incorporeal hereditaments.)

INCORPOREAL HEREDITAMENTS.

Incorporeal hereditaments are principally of ten sorts:—

1. Advowsons; 2. Tithes; 3. Commons; 4. Ways; 5. Offices; 6. Dignities; 7. Franchises; 8. Corodies or Pensions; 9. Annuities; 10. Rents.

1. Advowsons.

An Advowson is the perpetual right of presentation to a church or ecclesiastical benefice.

He who has the right of Advowson is called the patron of the church.

Origin of the right of Patronage.

When lords of manors built churches on their own demesnes, and appointed tithes of those manors to be paid to the officiating ministers, the lord thus building a church had of common right a power annexed of nominating a properly qualified minister to officiate in that church.

Advowsons appendant are such as are and have continued to be annexed to the manor, so that a grant of the manor will carry the Advowson with it.

Advowsons in gross are such as, having been once separated from the property of the manor by a legal conveyance, can never again become appendant.

Advowsons presentative, collative, and donative.

An Advowson presentative is one where the patron presents for institution to the bishop or ordinary a canonically qualified clerk.

An Advowson collative is one where the right of presentation is with the bishop, who by one act, *i. e.* collation, effects the same results as would be produced by presentation and institution in the case of an advowson presentative.

An Advowson donative is one where the patron's deed of donation is sufficient to confer the benefice, without presentation, institution, or induction.

2. Tithes.

Tithes are the tenth part of the increase yearly arising and renewing from the profits of lands (predial), the stock upon lands (mixed), and the personal industry of the inhabitants (personal tithes).

1. Origin of Tithes.

Tithes were an institution among the Jews. They were probably introduced into England at the establishment of the English Church; their payment was expressly ordered at an English Synod held in A.D. 786. A penalty for their non-payment was fixed in a treaty between Edward and Guthrun A.D. 900, and a similar enactment was made by Athelstane A.D. 930.

2. Tithes, to whom payable.

Formerly the person liable might pay to whom he pleased, but on the division of dioceses into parishes the tithes of each parish were allotted to its particular minister.

It is now universally held that tithes are due of common right to the parson of the parish, unless there be a special exemption.

[Exemptions from payment of tithes:—

1. By real composition.

When the owner in consideration of his lands being discharged from tithes gave the parson some lands or other real recompense.

2. By custom or prescription.

(α) A modus decimandi, or more simply a modus, was where a special manner of tithing was allowed, different from the general law of taking tithes in kind.

The following were the requisites for a valid modus:—It must have been (1) certain and invariable; (2) beneficial to the parson; (3) something different to the thing compounded for; (4) a modus for one species of tithe would not be a discharge from payment for another species; (5) the recompense must be as durable as the tithes which it discharged; (6) the modus must not be too large, *i.e.* a rank modus.

(β) A prescription de non decimando is a claim to be entirely discharged from tithes and to pay no compensation in lieu of them, thus the king, by his prerogative, is discharged from all tithes, and a vicar pays none to the rector. The common law allowed no total discharge from tithes except in the cases of the king and spiritual persons, the rule being that in lay hands modus de non decimando non

valet. The Stat. 31 Henry VIII. c. 13 enacted that all persons holding lands once belonging to the dissolved abbeys should not be liable for tithes in respect of such lands.]

Tithes first came into the hands of laymen on the dissolution of the monasteries by Henry VIII., when all grants made by the king of the property of the religious houses (including tithes) were confirmed by Statutes 27 Henry VIII. cap. 28, and 31 Henry VIII. cap. 13.

The various Acts for the commutation of tithes have substituted generally for the system of tithing in kind a rent-charge varying with the price of corn. Provision has also been made for the merger or extinction of tithes when they come into the hands of the owner of the land.

3. Commons.

Rights of common are profits which one man has in the land of another.

They are of various kinds.

(*a*) **Common of pasture** is a right of feeding one's beasts on another's land.

If the right is annexed to the tenure of lands held of the lord of the manor it is said to be appendant.

If it is annexed to lands, but not by virtue of tenure, then it is said to be appurtenant to the lands.

If it is annexed to lands in one lordship, and is exercisable over lands in an adjoining manor, it is said to be *common because of vicinage.*

If it is neither appendant, appurtenant, nor because of vicinage, it is said to be common in gross.

(β) **Common of piscary** is a liberty of fishing in another man's water.

(γ) Common of turbary, a liberty of digging turf on another man's ground.

(δ) **Common of estovers** (or botes) is a liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate.

4. Ways.

A right of way is the right of going over another man's ground. It may arise by grant or prescription.

5. Offices.

Offices are a right to exercise a public or private employment, and to take the fees and emoluments thereunto belonging.

The sale of public offices was declared illegal by Statute 5 & 6 Ed. VI. cap. 16.

6. Dignities.

Titles of honour, wherein a man may have a property or estate. These bear a near relation to offices.

7. Franchises (or Liberties).

A franchise is a royal privilege or branch of the king's prerogative subsisting in the hands of a subject, for example, to have a court or liberty of holding pleas within a certain manor.

8. Corodies.

Corodies are a right of sustenance or to receive certain allotments of victual and provision for one's maintenance.

9. Annuities.

An annuity is a yearly sum chargeable only upon the person of the grantor.

10. Rents.

Rent is defined as *a certain profit issuing yearly out of lands and tenements corporeal.*

[The word rent (reditus or render) signifies a compensation or return, it being in the nature of an acknowledgment given for the possession of some corporeal inheritance.]

Rent service is rent which having a service incident to it is connected with some tenure.

A right of distress is inherent in rent service.

A Rent charge is payment charged upon lands, as by deed, with covenants for distress in default of payment.

Rent seck (reditus siccus) is a rent reserved for which there is no power of distress.

Other varieties of rent—

Rents of Assize and quit rents are those paid from time immemorial by the tenants of a manor.

Rack rents are rents of the full value of the tenement or near it.

Fee farm rent is a rent charge of at least one-quarter the value of the lands, issuing out of an estate in fee.

B. THE TENURES BY WHICH THINGS REAL MAY BE HELD.

CHAPTER IV.—(Of the Feudal system.)

The feudal system had its origin in the military policy of the Northern nations, who poured themselves over Europe after the fall of the Roman Empire.

Districts being allotted to the chief men of the conquering tribes, the lands were dealt out again by these in smaller parcels to their followers, some lands to hold as their own, in *allodial* or absolute ownership, others to be held of the chief on condition of military service.

The benefits which followed in the wake of this system were so evident that the allodial owners were glad to surrender their lands to hold them on similar terms to the feudal tenants.

[The feudal idea practically owes its origin to the engrafting of the emphyteusis, or perpetual lease, upon the precarium or tenancy revocable on the will of the grantor. The system as a whole was of gradual growth, but the period of its most marked development was from the middle of the tenth to the middle of the eleventh century.—*V. Austin's Lectures*, LI. LII.]

The Feudal System in England.

The introduction of the Feudal tenures into England dates from the Conquest. At the Council of Sarum (1085) all the principal landowners submitted their lands to the yoke of military tenure: all free men were at the same time ordered to take an oath of fealty to the king.

Fundamental Maxim of Feudal Tenure.

The king is the universal lord and the original proprietor of all the lands in his kingdom, and that no man doth or can possess any part of it but what has *mediately* or *immediately* been derived as a gift from him to be held upon feudal services.

The king is styled *lord paramount.* Those tenants holding of him immediately in right of his crown and dignity were styled tenants in capite or tenants in chief: if such chief tenants granted lands again to their inferiors, they were termed mesne or middle lords. The lowest tenants in the feudal chain received the name of tenants paravail, being presumed to make profit out of the land.

The grantor was termed the *lord*, the grantee the *vassal.*

The feud or fee was conferred—

1. By words of donation (dedi et concessi).

2. By corporal investiture or open delivery of feudal possession (seisin).

3. By oath of fealty or profession of faith to the lord, coupled with *homage* which was rendered by the vassal thus; kneeling, ungirt, uncovered, holding both his hands between those of the lord, he swore to become his 'man' from that day forth of life and limb and earthly honour, he then received a kiss from his lord and the ceremony was complete.

Feuds originally granted to be held for the life only of the vassal were in process of time extended to his

sons, and eventually in cases of gifts to a man and his heirs his descendants *ad infinitum* were called to succeed him.

The Ancient English Tenures.

CHAPTER V.—(Of the Ancient English Tenures.)

According to the services rendered by the Feudal tenants the Tenures may be classified thus:—

I. Tenure in Chivalry or by Knight Service.
Services Free and Uncertain.

II. Tenure by Free Socage.
Services Free and Certain.

III. Tenure in Villeinage.
Services Base and Uncertain.

IV. Tenure in privileged Villeinage, or Villein-socage.
Services Base and Certain.

I. Tenure by Chivalry or Knight Service.

A determinate quantity of land termed a knight's fee was necessary to create this tenure. The value of a knight's fee was fixed at 20*l.* per annum in the reign of Edward I.; for this the tenant was liable for forty days' military service.

Besides the military service, there were various 'feudal incidents' due from the tenant in chivalry:—

1. Aids.

Money payments made (α) to ransom the lord's person; (β) to make the lord's eldest son a knight.

(γ) To provide a marriage portion for the lord's eldest daughter.

The Statute Westminster i. (3 Edward I. cap. 36) fixed the two last-mentioned aids at 20*s.* for each knight's fee (*i. e.* the twentieth part of the value of the fee); and

Statute 25 Edward III. cap. 11, made a similar enactment in behalf of the tenants in capite.

2. Reliefs.

Payments made by the heir (if of full age) to the lord on taking up the inheritance (relevare hereditatem). They originated before the feuds were hereditary, but were continued afterwards.

William I. ordered arms to be paid as reliefs.

The 'assize of arms' (27 Henry II.) ordered that every man's arms should descend to his heir for the defence of the realm. A composition of 100*s.* was thereafter made payable in lieu of arms for each knight's fee. This was termed scutage.

3. Primer seisin.

A right which the king had when any of his tenants in capite died seised of a knight's fee, to receive of the heir (if of full age) one whole year's profits if the lands were in possession, and half a year's profits if the lands were in reversion expectant on a life-estate.

4. Wardship.

The lord was entitled to the custody of the lands and person of the heir, without any account of the profits, till 21, if a male, and till 14, if a female (till 16 by Statute of Westminster i. 3 Edward I. cap. 22). On coming of age, the wards had to pay half a year's profits to obtain the lands from their guardians. This was termed suing out livery, or ousterlemain.

5. Marriage.

The right of the lord to tender the infant heir a suitable match, *i.e.* without disparagement or inequality. In case of refusal the heir had to pay the sum that the lord would have received from the marriage (valor maritagii); and in case a ward married without the lord's consent, the fine was double the value of what the lord had lost.

6. Fines on alienation.

It was ordered by 1 Edward III. cap. 12 that Crown tenants should pay one-third of the yearly value of the lands for a licence; but if the tenant aliened without a licence, a full year's value was to be paid.

7. Escheat.

The dissolution of the natural bond between lord and tenant from the extinction of the blood of the

latter by either natural or civil means—for example, by failure of his heirs, or by the corruption of the stock of descent through the commission of treason or felony.

Varieties of Tenure in Chivalry.

Grand Serjeanty.

The tenant was not bound to serve the king generally in the wars, but to do some special honorary service to the king in person—as, for example, to act as his champion at his coronation.

Cornage was a species of grand serjeanty. The tenant was merely bound to wind a horn to give notice of the approach of the king's enemies.

GRADUAL EXTINCTION OF MILITARY TENURES.

The first step consisted in the institution of *scutage.* As personal attendance in knight service was found troublesome and inconvenient, it became the practice to compound for it by payments which were called escuage or scutage (*i.e.* shield money). Scutages were first taken in 5 Henry II.

Magna Charta ordered that no scutage should be taken without the consent of Parliament.

Henry the Third's charter permitted only reasonable and moderate escuages.

But by Statute 25 Edward I. cap. 5 and 6, and other subsequent statutes, it was finally laid down that no

aids or tasks of any kind should be imposed without the common assent of the realm.

In scutage is found the origin of the modern land tax.

The commutation of personal services for money payments destroyed all the peculiar advantages of the feudal system, leaving only the burdens and hardships to the tenants.

The second step in the abolition of military tenures was the Statute 12 Charles II. cap. 24. This enactment at one blow turned all tenures held of the king or others into free and common socage; the feudal incidents appertaining to knight service were abolished, and for the feudal duties there was substituted an hereditary excise. The only exemptions from the operation of this Act were tenures in frankalmoign, copyholds and the honorary services (without the slavish part) of grand serjeanty.

CHAPTER VI.—(Of the Modern English Tenures.)

II. Tenure by Free Socage.

Socage is a tenure by any certain and determinate service of an honourable character.

[The word 'socage' itself is derived either from the Anglo-Saxon 'soc,' a franchise or privilege (privileged as being certain in its services), or from 'soc,' a ploughshare, in which case socage would mean 'an agricultural tenure.']

Socage tenure resembled tenure by knight service, inasmuch as in both lands were held of a feudal lord, and were subject to a feudal rent or service, uncertain

in knight service, certain in socage; in both tenures an oath of fealty was due to the lord.

Socage tenure was burdened with the following incidents, which varied from those of knight service to the extent stated below:—

Aids.

For knighting the lord's son, or endowing the lord's eldest daughter on her marriage, socage lands were by Statute of Westminster i. liable to aids fixed at twenty shillings for each 20*l.* of annual value.

Aids in socage tenure were abolished by 12 Car. II. cap. 24.

Reliefs.

One year's value of the land instead of Reliefs is reserved by Stat. 12 Car. II. cap. 24.

Primer Seisin.

Due from the king's socage tenants only.

Abolished by the Stat. 12 Car. II. cap. 24.

Wardship.

This right attached to the nearest relation who could not inherit; at the age of 14 the ward could select a guardian.

The Stat. 12 Car. II. cap. 24, which turned all tenures into free and common socage, enacted that the father by will (or in default the Court of Chancery)

might appoint a guardian till the child attained the age of 21.

Marriage.

Here the guardian took no advantage. If he married his ward before the age of 14, he was liable for the valor maritagii, even though he took nothing by such marriage.

[It will thus be seen that knight-service and socage tenures especially differ as regards the incidents of wardship and marriage.]

Fines on alienation were probably due from the king's socage tenants in capite. They were abolished by 12 Car. II. cap. 24.

Escheat in socage tenure acts as in knight service.

[Exception—Gavelkind lands did not escheat for felony.]

Varieties of Socage Tenure.

1. Petit Serjeanty.

To be classed under socage tenure, since the render was of a fixed and certain thing, such as a bow, sword, flag, or the like.

[In Grand Serjeanty the tenant rendered a service for his lands.]

2. Burgage or Borough English.

Also called town socage. A tenure existing in ancient boroughs where the English customs were not supplanted by Norman ones.

This tenure was subject to various customs—for example, lands were devisable by will, and the youngest son succeeded his father on an intestacy.

Gavelkind.

Lands held 'in free socage subject to the custom of gavelkind'—

(1) Descended equally to all the sons alike.

(2) Were devisable by will.

(3) Did not escheat for treason.

(4) Were capable of being alienated by feoffment if the tenant was 15 years of age.

This custom prevails in the county of Kent.

III. Tenure by Villenage.

From tenure in villenage is derived the modern tenure of copyhold.

Manors were substantially of Saxon origin, though the name itself is of Norman extraction.

Districts of land were held by lords or great personages; of these lands they retained what they considered necessary for their own purposes, and of the rest they distributed portions to be held by their dependents.

[In Saxon times the lands of a lordship or barony were distinguished into—(α) book lands or those which were granted by book or charter to individual tenants for certain rents and free services, and (β) folkland or the common possession of the community. The lord gradually asserted his rights over the folkland, so that in Norman times the uncultivated lands of a manor are spoken of as 'the lord's waste.']

The lords permitted their villeins, a class of men barely removed from slaves, to occupy portions of the uncultivated land, for the purpose of sustaining themselves and their families. At first holding at the will of the lord, the villeins' position gradually became stronger as they came to hold 'at the will of the lord according to the custom of the manor,' so that now the will of the lord must be exercised agreeably to the customs which are evidenced by the roll or book in which the records of each manor are kept.

The tenants retaining copies of the entries in the Court roll relating to their own lands, were said to hold by copy of Court roll, whence we have the term '*Copyholder.*'

Incidents of Copyhold Tenure.

As regards fealty, services, reliefs, and escheats, it resembled free tenures.

Heriots are renders of the best beast or chattel on the lands at the death of the tenant. They are of Danish origin.

Wardships. The lord is guardian as in knight service, but is accountable for the profits as in socage.

Fines are due sometimes on the death of a tenant, and at other times according to the custom of each manor.

Customary Freehold.

In certain manors the copyhold tenants are said to hold according to the custom of the manor, and not expressly at the will of the lord. This tenure is termed

customary freehold, but is identical in its nature with copyhold.

IV. Tenure in Villein-socage.

Certain lands or manors which were in the hands of the Crown at the Conquest receive the name of ancient demesne. The tenants of these manors held by services which were certain and determinate, and had various other rights and privileges—for example, they were permitted to try the right of their property in a Court of ancient demesne by a peculiar process termed a 'writ of right close.'

Spiritual Tenures.

1. Tenure in Frankalmoign.

Tenure in frankalmoign, libera eleemosyna or free alms, is that whereby a religious corporation, aggregate or sole, holds lands of the donor to them and their successors for ever in consideration of spiritual services, not certain or defined.

This tenure dates from Saxon times.

It was reserved by 12 Car. II. cap. 24.

2. Tenure by Divine Service.

The tenant was bound to do some special and certain services of a spiritual nature.

This tenure was abolished by Stat. 12 Car. II. cap. 24.

C. THE ESTATES WHICH MAY BE HAD IN THINGS REAL.

Estates will be considered with regard to—

(α) **The quantity of interest which the tenant has in the tenement.**

(β) **The time at which that quantity of interest is to be enjoyed.**

(γ) **The number and connections of the tenants.**

(α) Estates considered with regard to the quantity of the tenant's interest.

(α) Estates may be either (I) **freehold,** or (II) **less than freehold.**

I. An estate of freehold, liberum tenementum, **or frank tenement, is an estate either of inheritance or for life in lands or tenements of free tenure.**

It is according to Britton, '*The possession of the soil by a freeman.*' This feudal possession could formerly only be transferred by livery of seisin (or feoffment).

Estates of freehold may be either—

(α) **Of inheritance.**

(β) **Not of inheritance.**

An estate of inheritance is styled a *fee.*

[Meanings of the word 'fee'—

1. Property held of another as opposed to allodium, property owned absolutely.

2. An estate of inheritance or the largest interest that a man can have in a feud.]

CHAPTER VII.—(Freehold Estates of Inheritance.)

I. (*a*) Freehold Estates of Inheritance.

Freehold Estates of Inheritance may be either—
1. Absolute or **2. Limited.**

1. Absolute.

A freehold estate of inheritance absolute is styled a fee simple.

A tenant in fee simple holds to himself and his heirs simply; he is said to be 'seised in his demesne as of fee,' which term implies (*a*) that he is owner of the land itself and not merely of a seigniory or services, and (*β*) that he is seised of an estate of inheritance; also that he is not an allodial owner, but a feudal tenant.

A fee simple is the most extensive estate known to the law; when a grant is made of such an estate there is nothing which can be left in or reserved by the grantor.

Before the Stat. 18 Edw. I. (Quia Emptores), on every alienation of a fee-simple estate a new tenure was created, the alienee becoming the tenant of the alienor. This was termed subinfeudation. The statute was passed in the interests of the lords (who by subinfeudation lost their feudal dues), and enacted that upon all alienations of land in fee simple the feoffee should hold of the same lord and by the same services as the feoffor.

[If we compare the feudal system to a chain, we can state the effect of the Stat. Quia Emptores by saying that it put an end to the creation of fresh links, and we infer from this that, as no fresh

links can have been created since 18 Edw. I., all existing tenures must have had their origin prior to the date mentioned.]

The word heirs is necessary in the grant or donation in order to make a fee or inheritance.

[Exceptions—In devises by testament the intention of the testator to pass the fee simple will be carried out, though inadequately expressed. The word 'successors' supplies the place of 'heirs' in grants to corporations sole.]

2. Limited fees.

These are of two sorts:—

1. Base fees.

Such as have a qualification subjoined, and must be determined whenever the qualification annexed is at an end.

[Example—Grant to A and his heirs, tenants of the manor of Dale. If A or his heirs cease to be tenants of the manor of Dale the grant is defeated.]

2. Conditional fees. (Estates in fee tail.)

Such as were restricted to particular heirs to the exclusion of others. They were called conditional fees by reason of the condition in the donation, that if the donee died without such particular heirs, the land should revert to the donor.

In other words, these estates were fee simples on condition that the grantee had issue.

On birth of issue the grantee could

(1) Aliene the land to the exclusion of (α) his heirs, (β) the donor.

(2) Forfeit it for treason, or (2) charge it with rents and other incumbrances.

As the grantee by alienation and re-purchase could acquire a fee simple, the lords lost their reversions. To prevent these results, the Statute De Donis Conditionalibus, 13 Edward I., known as the Statute of Westminster the Second, was passed in the interest of the lords. This statute enacted that the will of the donor, according to the form expressed in the deed of gift, should be strictly observed, and that tenements given to a man and the heirs of his body should at all events go to the issue, if any, or, if none, should revert to the donor.

The estate of the donee was termed a 'fee tail,' from *talliare*, to cut, being a portion cut off from the inheritance; the ultimate fee simple of the land expectant on failure of the donee's issue vesting in the donor, and being called his reversion.

In addition to the word 'heirs,' words of procreation, such as 'heirs *of the body*,' are necessary to create an estate-tail.

[Varieties of Estates tail—

A grant to a man and the heirs of his body
= an estate tail general.

" " " of his body by a particular wife
= an estate tail special.

" " " male of his body
= an estate tail male.

" " " female of his body
= an estate tail female.

Estates tail general and special might also be further limited to male or female heirs.]

From the Statute De Donis to the 12th year of

Edward IV., about two hundred years, estates tail were incapable of being defeated.

[The results of strict entails were that children grew disobedient, knowing they could not be set aside; farmers lost the benefit of leases made by tenants in tail; purchasers were defrauded by latent entails being discovered; treasons were encouraged as estates tail were not forfeitable beyond the life of the tenant.]

In the 12th year of Edward IV. it was decided in *Taltarum's case* that a common recovery suffered by a tenant in tail should be an effectual destruction of the estate tail.

[A recovery was in the form of an action collusively taken against the tenant in tail for the recovery of the lands entailed. The tenant in tail on the bringing of the action brought in some third person presumed to have been the grantor with warranty of the estate tail; the alleged warrantor was called upon to defend the title he had warranted, on his failing to defend judgment was given for the demandant to recover the entailed lands from the defendant, the latter having a judgment to recover lands of equal value from the alleged warrantor, who, being a man of straw, had no lands to give. The demandant thus obtained an estate in fee simple which he could re-convey to the former tenant in tail.]

Estates-tail were made forfeitable for treason by Stat. 26 Henry VIII. cap. 13; chargeable with Crown debts by 33 Henry VIII. cap. 39; chargeable with judgment debts by 1 & 2 Vict. cap. 110. It is, however, required by 27 & 28 Vict. c. 112 that judgments shall not affect the lands till they have actually been taken in execution.

The Act for the abolition of fines and recoveries (3 & 4 Will. IV. cap. 74) enables a tenant in tail in possession (by a simple deed enrolled in the Chancery

Division) to dispose of the lands entailed for an estate in fee simple.

I. (β) Freehold Estates not of inheritance.[1]

Freehold estates not of inheritance are estates for life, and may be

1. *Conventional*, created by act of Party, or
2. *Legal*, created by act of Law.

Estates for life are where a man holds for his own life, or for that of any other person or persons. If he hold by the life of another, he is said to be tenant *pur autre vie*, and the person upon whose life the estate depends is said to be the *cestui que vie*.

Incidents of a life estate.

1. *Estovers.*—The life tenant is allowed to take reasonable *estovers* or *botes* (*v.* page 11), but not to commit waste.

2. *Emblements.*—The life tenant is not prejudiced if his estate determines by the act of God or act of law, so that if he sow lands and die before reaping the crops, these shall go to his personal representatives. If the tenancy determine by the act of the tenant, then he forfeits all right to the emblements.

[Emblements = Those fruits of the earth which are annually produced by the labour of the husbandman.]

The under-lessee of a tenant of life is not prejudiced by the determination of the life-tenant's estate, even though it be by such tenant's own act; but a propor-

[1] See p. 27.

tion of the rent is payable to the life-tenant's successor in the land.

Tenancy in tail after possibility of issue extinct.

Where a man is tenant in tail special, and the person from whose body the issue was to spring dies without issue (or if having left issue that issue becomes extinct), then such tenant is said to be tenant in tail after the possibility of issue extinct.

Tenancy by the courtesy of England.

Where a man marries a woman seised of an estate of inheritance (that is, of lands and tenements in fee simple or fee tail), and has by her issue born alive which was capable of inheriting her estate; in this case he shall, on the death of his wife, hold the lands for his life, as tenant by the courtesy of England.

The requisites are—

1. Legal and canonical marriage of the wife; 2. The wife must have the actual seisin of the lands; 3. The issue must be born alive; 4. The issue must be capable of inheriting the mother's estate.

Tenancy in dower.

Old Law.

Dower at common law formerly consisted of a wife's right to one-third of the lands of which her husband was solely seised for any estate of inheritance during coverture.

Jointure.

Under the provisions of the Statute of Uses, 27 Henry VIII. cap. 10, dower may be barred by the wife's acceptance, previously to marriage and in satisfaction of her dower, of a competent livelihood of freehold lands and tenements, to take effect in profit or possession presently after the death of the husband, for the life of the wife at least.

The other methods of barring dower under the old law were—

1. By the purchaser of lands taking a joint conveyance to himself and trustees. See *Williams on Real Property*, page 227, 10th edition.

2. By limiting remainders to trustees, so as to prevent the purchaser having an estate of inheritance in possession, while enabling him (by means of a general power of appointment) to make any alienation of his entire interest. See *Williams on Real Property*, page 293, 10th edition.

[In Blackstone's time there were four species of dower (that 'de la plus belle' being abolished with the military tenures):—

1. At common law, described above.
2. By particular custom.

   For example, that the wife should have half the husband's lands (as often in copyholds and gavelkind lands).

3. Ad ostium ecclesiae, openly at the church door.
4. Ex assensu patris, where a son endowed his wife with a portion of his father's lands, with the consent of the latter.]

New Law.

With regard to women married since January 1, 1834, the law of dower is materially altered by 3 & 4 Will. IV. cap. 105.

No widow is entitled to dower out of any land absolutely disposed of by her husband in his lifetime or by will, and all charges, incumbrances, contracts, and engagements created by the husband, shall be effectual as against the widow's right to dower.

On the other hand, the right of dower is extended to equitable as well as legal estates, and to lands over which the husband merely had a right and not actual seisin.

A mere declaration made by deed or will is also sufficient to bar the widow's right wholly or in part.

[In copyhold lands a special custom is necessary to give a widow a right of dower, which is in such cases called Free Bench. The right to free bench generally only extends to those lands which the husband held at his death, except in the manor of Cheltenham, where it extends to all copyholds of inheritance of which the husband was seised during coverture.—See *Williams on R. P.*, p. 371, 10th ed.]

CHAPTER IX.—(Of estates less than freehold.)

II. Estates less than freehold.

These may be either—

1. **For years.**
2. **At will.**
3. **On sufferance.**

1. An estate for years is where one man lets to another lands or tenements for some determinate period.

The lessee's estate is called a 'term' (terminus), because its duration or continuance is bounded, limited, and determined, for every such estate must have a certain beginning and certain end.

Origin of Estates for years.

They were originally granted to farmers who rendered an annual equivalent in money, provisions, or other rent. Though in time these persons acquired a more permanent interest, they were always regarded in the light of bailiffs or servants of the lord. The lessee's interest might also be defeated by a recovery suffered by the tenant of the freehold.

The Statute 21 Henry VIII. protected the lessee against dispossession on the alienation of the freehold, and the interest of tenants for years becoming more secure and certain, long terms came to be extensively employed for mortgages, family settlements, and other purposes, retaining, however, the same general inferiority to freeholds as when they were little better than tenancies at the will of the landlord.

[So an estate for life is a freehold, but an estate for 1000 years is a mere chattel.]

The lease confers upon the lessee a right to his term, interesse termini; on entry he is said to be *possessed of his term*, the feudal seisin remaining in the freeholder.

The general rules as to incidents are the same as in life estates.

Emblements.—Here, if the term depend upon an uncertainty (as in a lease to A. for 100 years, determinable on the death of B.), the lessee has the emblements. If the term ends by the lessee's own act, he does not take the emblements.

Various modifications of these rules have been introduced by statutes.

Estates for years were originally created by mere verbal (parol) agreement. It was, however, enacted by the Statute of Frauds, that all terms exceeding three years from the making thereof, or having a less rent reserved than two-thirds the full improved value of the land, shall be void, unless made in writing signed by the parties or their authorised agents.

Further, the Statute 8 & 9 Vict. c. 106, s. 3, requires that a lease required to be in writing shall be void at law, unless made by deed.

(See *Williams on R.P.* part IV. chap. i.)

2. An estate at will is where lands or tenements are let by one man to another to have and to hold at the will of the lessor, and the tenant by force of this lease obtains possession.

[The tenant is entitled to emblements if the estate is determined by the will of the lord.]

[Copyholders are technically tenants at will, yet the will is so qualified, restrained and limited by the custom of the manor, that the estate of the tenant is equal in certainty to one of freehold.]

3. An estate at sufferance is where a man comes into possession of land by a lawful title, but keeps it afterwards without any title at all.

[In case of a person holding over after the determination of an estate for life or for years, it is enacted by Stat. 11 George II. that such person shall pay double the yearly value or double the rent for the time during which he so holds over.

CHAPTER X.—(Of estates upon condition.)

Estates upon condition.

[These are qualifications of other estates: any kind of estate being capable of restriction by a condition.]

When estates depend upon the happening or not happening of some uncertain event, whereby the estates may be either originally created, or enlarged, or finally defeated, they are termed estates upon condition.

The condition may be either (A) Implied or (B) Expressed.

A. Estates upon condition implied.

Where a grant of an estate has a condition annexed to it inseparably from its essence and constitution, though no condition be expressed in words.

Example.—In a grant to a man of an office the law annexes the implied condition that the man shall discharge duly the duties of that office.

B. Estates upon condition expressed.

Conditions expressly annexed to the grant of an estate may be either precedent or subsequent. Conditions precedent are such as must happen or be performed before the estate can vest or be enlarged.

Conditions subsequent are those by the failure or non-performance of which an estate already vested may be defeated.

[Example.—An estate to A. upon his marriage with B. is an

estate upon condition precedent, and till the marriage A.'s estate does not vest.]

[Distinction between a condition in deed and a condition in law or limitation.

If an estate is so expressly confined and limited by the words of its creation that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail, this is termed a limitation. But when an estate is strictly upon condition in deed (as if granted expressly upon condition to be void upon payment of a sum of money by the grantor), then the grantor or his representatives must take advantage of the breach of condition, and make an entry or claim to avoid the estate.]

Particular forms of Estates upon condition subsequent.

Estates held in vadio, in gage or pledge.

1. **Vivum vadium** (living pledge), as where a man grants an estate to his creditor to repay himself his debt and interest out of the rents and profits.

As soon as the sum is raised, *i.e.* when the condition subsequent is accomplished, the estate is conditioned to be void.

2. **Mortuum vadium** (dead pledge) or **mortgage.** A mortgage is an absolute conveyance of an estate (as a security for money lent to the mortgagor), subject to an agreement for a reconveyance on the repayment of the debt.

If the mortgagor fails to pay the sum borrowed, principal and interest, at the stated time, the estate of the mortgagee becomes absolute at law. Equity, however, regarding the mortgage as a security for money lent, allows the mortgagor to redeem his estate on payment of principal, interest, and expenses to the mortgagee.

This is termed his *Equity of redemption.*

The mortgagee may, however, foreclose, that is, call upon the mortgagor to redeem his estate presently, or in default to be for ever foreclosed from redeeming the same.

The mortgagee has also, generally, in modern mortgages an express power of sale, being only bound to account to the mortgagor for the residue of the proceeds, after repaying himself principal, interest, and expenses.

3. Estates by Statute merchant and Statute staple.

These were estates held among traders as securities for money.

Estates by statute merchant were entered into before the chief magistrate of a trading town, according to the provisions of the Statute De Mercatoribus, 13 Edward I. The creditor held the lands till he had satisfied his debt out of the rents and profits.

Estates by statute staple (pursuant to Statute 27 Edward III. cap. 9) were somewhat similar estates entered into before the *mayor of the staple*, or grand mart for the principal commodities of the kingdom.

4. Estates by Elegit.

Upon a plaintiff obtaining judgment the sheriff will under a writ of execution give him possession of the defendant's lands till the debt and damages are fully paid. The possessor was termed tenant by *elegit* because he *elected* to take the remedy originally granted by 13 Edw. I. cap. 18 (Statute of Westminster the Second), which statute enabled one half of the debtor's lands only to be taken under the writ.

The Statute 1 & 2 Vict. cap. 110 permitted the whole of the lands to be so taken.

CHAPTER XI.—(Of estates in possession, remainder and reversion.)

(β) Estates considered with regard to the time at which the tenant's interest is to be enjoyed.[1]

Estates may be—I. In possession; II. In expectancy.

I. Estates in possession are those whereby a present interest passes to and resides in the tenant, not dependent upon any subsequent circumstance or contingency.

The estates hitherto treated of have been of this class.

II. Estates in expectancy are those whereby a man is entitled to land, not immediately, but in futuro.

These estates are of two kinds—

(i) **In remainder**; (ii) **In reversion.**

(i) Estates in remainder.

(i) An estate in remainder is an estate limited to take effect and be enjoyed after another estate is determined.

[Example.—A. (tenant in fee simple) grants to B. for twenty years, and after the determination of B.'s estate to C. and his heirs for ever. Here C. is said to have a remainder in fee.]

Any number of remainders may be carved out of the same inheritance; but no remainder can be limited after the grant of a fee simple, because the fee simple is all that can be granted by any grantor.

[The estate left with the grantor after grants of particular estates or remainders is styled his reversion.]

---

[1] See p. 26.

Rules for the creation of valid remainders.

1. There must be some particular estate precedent to the estate in remainder, (or)

Every estate in remainder requires a particular estate to support it.

2. The remainder must commence or pass out of the grantor at the time of the creation of the particular estate.

3. The remainder must vest in the grantee during the continuance of the particular estate, or eo instanti that it determines.

[These rules are based upon the feudal principle that an estate of freehold cannot be created to commence in futuro, but ought to take effect at once either in possession or remainder. The whole estate—*i.e.* the particular estate and the remainders—passes from the grantor to the grantees by the livery of seisin.

The above rules also imply another, that the feudal seisin must never be without an owner; thus in the case of a grant to A. for twenty years and one year after the end of such term to B. in fee, the remainder would be void on account of the feudal seisin reverting to the grantor after A.'s term.]

Remainders are also divided into—

I. Vested and II. Contingent.

Vested and contingent remainders. Distinction.

I. '*If an estate, be it ever so small, be always ready from its commencement to its end to come into possession the moment the prior estates happen to determine, it is then termed a vested remainder.*'—*Will. R. P.* p. 245, 10th ed.

II. A contingent remainder is a future estate which waits for and depends on the termination of the estates

which precede it; it is an estate in remainder, which is not ready from its commencement to its end to come into possession at any moment when the prior estates may determine.—*Will. R. P.* p. 259, 10th ed.

The contingency in such remainders is of two kinds—

1. Where the remainder is limited to an uncertain person.

2. Where the person to whom it is limited is fixed and certain, but the event upon which it is to take effect is vague and uncertain.

[Examples.—(1) To A. for life, remainder to B.'s eldest son (then unborn) in tail.

(2) To A. for life, and if B. survive A., to B. in fee.]

Rules for creation of valid contingent remainders.

1. A contingent remainder of freehold must be limited on an estate of freehold—thus, grant to A. for years, remainder to B.'s heir in fee, would be a void remainder.

2. A contingent remainder must become vested during the continuance of the particular estate, or eo instanti it ends. This flows from rule 3 above.

3. The possibility of the contingency on which the remainder is limited must not be too remote.

[For example; a remainder to the eldest son of B. (an unborn person) would be void, involving a double contingency: 1. B.'s birth. 2. Birth of a son to B.]

An executory devise is such a disposition of lands by will that thereby no estate vests at the death of the devisor, but only on some future contingency.

It differs from a contingent remainder in three points—

1. It does not need a particular estate to support it.
2. An estate may by it be limited after a fee simple.
3. A remainder may be limited of a chattel interest after a particular estate for life created in the same.

[Example of an executory devise. To devisor's son A., an infant and his heirs, but in case A. should die under the age of twenty-one years, then to B. and his heirs.]

For detailed account of executory interests, *cf. Will. R. P.*, part II. cap. iii.

(ii) Estates in reversion.

(ii) **An estate in reversion** is the residue of an estate left in the hands of the grantor to commence in possession after the determination of some particular estate granted out by him.

[A reversion therefore arises by act of Law as a remainder by act of Party.]

The incidents to a reversion are Fealty and Rent. By a grant of the reversion the rent passes, but on a grant of the rent generally the reversion will not pass.

Merger.

Whenever a greater and a less estate coincide and meet in one and the same person by one and the same right, the less interest is annihilated or *merged* in the greater.

[Example.—A tenant for years acquires the fee simple by purchase. The term is merged in the fee simple.]

Rule in Shelley's Case.

When the ancestor by any gift or conveyance takes an estate of freehold, and in the same gift or conveyance an estate is limited mediately or immediately to his heirs in fee or in tail, the words 'the heirs' are words of limitation of the estate of the purchaser.

[Example.—Grant to A. for life, remainder to B. for life, remainder to A.'s heirs in fee. Here on A.'s death intestate, A.'s eirs take by descent from A. and not under the grant: the words 'the heirs' are only used to mark out the estate that A. takes.]

(γ) Estates considered with regard to the number and connection of the tenants.[1]

1. In severalty.

When a person holds lands or tenements without any other person being joined or connected with him in point of interest during his estate therein, such person is said to hold in severalty.

2. In joint tenancy.

An estate in joint tenancy is where lands or tenements are granted to two or more persons to hold in fee simple, fee tail for life, for years, or at will.

(*a*) *Creation of a joint tenancy.*

It can only arise by act of parties, by purchase, or grant.

[1] See p. 26.

(β) *The properties of joint tenancy.*

1. The tenants must have '*unity of interest.*'

For example; one cannot be tenant for years and the other for life.

2. The tenants must have *unity of title, i.e.* their rights must accrue under the same act or deed.

3. There must be *unity of time*; the tenants' estate must vest at the same moment as well as by the same title.

4. Joint tenants have *unity of possession*; they each of them have the entire possession as well as of every parcel of the whole. They are said to be seised per my et per tout, each having an undivided moiety.

From this principle arises the Jus accrescendi or right of survivorship, as an incident of all joint estates, whereby upon the decease of a joint tenant the entire tenancy remains to the survivors.

(γ) *Modes of determining a joint tenancy.*

1. By partition, as when the tenants agree to hold their lands in severalty, thus destroying the unity of possession.

2. By alienation, as when one joint tenant alienes to a third person. The grantee and the other tenant hold by different titles, and the unity of title necessary to joint tenancy is accordingly destroyed.

3. By an accession of interest to either joint tenant causing the destruction of the unity of interest—as, for example, where the inheritance is purchased by or descends upon either tenant, this destroys the jointure.

[Practical uses of joint tenancy. Trustees are always made joint tenants, so that on the decease of one of them the whole estate vests at once in the survivor or survivors without devolving on the heir at law of the deceased trustee.—*Williams, R. P.* part I. cap. vi.]

3. In coparcenary.

(*a*) *Creation of estates in coparcenary.*

An estate held in coparcenary is when lands of inheritance descend from the ancestor to two or more persons.

Tenancy in coparcenary arises—

(1) At the Common Law, when a person seised in fee simple or fee tail dies, and his next heirs are two or more females.

(2) By particular custom, as in gavelkind, where the lands descend to all the males in equal degree.

Coparceners are in law considered as together making but one heir, and have but one estate between them.

(*β*) *The properties of coparcenary.*

Coparceners possess the unities of—

1. *Interest*;
2. *Title*;
3. *Possession*;

but differ from joint tenants in the following points—

1. They claim by descent and not, as joint tenants, by purchase.

2. They may acquire their interests at different periods.

[For example: if A. and B. (daughters of C. deceased) are

coparceners, then on the death of A., her heir and B. are still parceners.]

3. They have *unity* though not *entirety* of interest, each being entitled to the whole of a distinct moiety, so that there is no Jus accrescendi, and each part descends severally to the heirs of each coparcener.

[Law of Hotchpot.

Where a daughter had an estate given with her in frank marriage by her ancestor, and lands descended from the same ancestor to her and her sisters in fee simple, she had no share in such lands unless she chose to throw her frank marriage lands into hotchpot, that is, to divide them in equal proportion among her sisters with the lands descending from the ancestor.]

(γ) *Modes of determining a tenancy in coparcenary.*

1. By partition which may be effected at the will of any of the coparceners.

2. By alienation of one parcener which disunites the title and may disunite the interest.

3. By the whole descending to and vesting in a single person, and thus becoming an estate in severalty.

4. Tenancy in common.

A tenancy in common is where two or more persons hold land with interests accruing under different titles, or with the same titles but accruing at different times, or where the tenants take in distinct though undivided shares.

The unity of *possession* alone is necessarily incidental to this tenancy, and there may be an entire disunion of interest, title, and time. Moreover, as there

is no entirety of interest, there is no survivorship as in joint tenancy.

[Example.
A. and B., tenants in common.
A. may hold his part in fee simple.
B. „ „ in fee tail.
Here is no unity of interest.
A. may have acquired by purchase from X.
B. „ „ by descent from Y.
Here there is no unity of title.
A.'s estate may have been vested fifty years.
B.'s „ „ „ one year.
Here there is no unity of time.

(*a*) Estates in common, how created.

(1) By the destruction of estates in joint tenancy or coparcenary, as where A. and B. are joint tenants in fee, and A. alienates to C. for life, then C. and B. are tenants in common.

(2) By special limitation in a conveyance, the grant must express that the grantees are to take in distinct though undivided shares.

[Formerly the law favoured joint tenancy because (*a*) the divisible services (rent, &c.) were not divided; (*β*) the entire services (as fealty) were not multiplied.

With the decay of feudalism these considerations have lost somewhat of their force, and the law regarding the possibility of hardship from the Jus accrescendi rather favours tenancy in common.]

(*β*) Incidents of tenancy in common.

Tenants in common take by distinct undivided shares. Any tenant may require a partition of the lands to be made.

(γ) Estates in common, how dissolved.

(1) By the union of all the interests and titles in one tenant;

(2) By partition among the tenants, which gives them all respective severalties.

N.B.—Joint tenants can bring actions of waste and not trespass. Coparceners can bring neither. Tenants in common can bring both.

D. THE TITLE TO THINGS REAL (WITH THE MANNER OF ACQUIRING AND LOSING IT).[1]

CHAPTER XIII.—(Of the title to things real, in general.)

Title.—Sir Edward Coke's definition:—'Titulus est justa causa possidendi id quod nostrum est'—the means whereby the owner of lands hath the just possession of his property.

Title: Austin's definition:—'Titles are the facts or events of which the rights of property are the legal consequences, and also the facts or events on which, by the disposition of the law, they terminate or are extinguished.'—Austin, *Jurisp.* cap. LIV.

1. The most imperfect form or degree of title is the mere *naked possession* or occupation of the estate without any actual or apparent right.

2. The next step is the *right of possession* which may reside in one man, though the actual possession is with another, as in the case of a man forcibly disseised of his estate.

3. The right of property without the actual possession, as where a person unlawfully disseised neglects to pursue his remedy within the time limited by law.

4. A complete title to lands is where the right of property is joined with the right of possession.

[Titulus in Roman Law.

A title may often be separated into an antecedent and a consequent fact or set of facts; and titulus is the name given to the antecedent, and modus acquirendi to the consequent part. The French titre = the titulus of Roman law.—Austin, *Jurisp.* cap. LV.]

---

[1] See p. 5.

Titles are either—[1]

I. By Act of Law, of which titles the principal are Descent, Escheat, Custom, and Dower.

II. By Act of Party, that is, by Purchase, under which are included acquisition by Occupancy, Forfeiture, and Alienation or Voluntary Transfer.

I. TITLES BY ACT OF LAW.

1. Title by Descent.

CHAPTER XIV.—(Of Title by descent.)

Descent or hereditary succession is the title whereby a man on the death of his ancestor acquires his estate by right of representation as his heir at law. An heir is the person upon whom the law casts the estate. The descending estate is called the inheritance.

The old rules as to the descent of the inheritance were founded on feudal principles, and had undergone little change for 500 years, when they were remodelled by Statute 3 & 4 Will. IV. cap. 106 (1834).

The old and new rules are here given together:—

New rule.	*Old rule.*
1. In every case descent shall be traced from the last *purchaser.*	1. Inheritance shall lineally descend to the issue of the person *seised,* but shall never lineally *ascend.*
2. Inheritance shall in the first place lineally descend to the issue of the purchaser in infinitum.	

[1] The classification of Stephen is here followed in preference to that of Blackstone.

3. Children of purchaser are preferred to their own issue, and among such children males to females, and an elder male to a younger; but females (where there are more than one) take together.

4. Issue of children of purchaser represent their parents in infinitum, the children of the same parent with regard to each other being subject to Rule 3.

5. On failure of issue of the purchaser the inheritance descends to the nearest lineal ancestor then living in the preferable line, supposing no nearer ancestor in that line to exist.

6. Among the lineal ancestors of the purchaser the paternal line, whether of the purchaser or of any male or female ancestor, is preferred to the maternal.

The mother of the more remote male ancestor to be

5. The old rule was hereditas nunquam ascendit, the inheritance being compared to a falling body.

preferred to the mother of the less remote male ancestor.

7. If an ancestor to whom the inheritance would have descended dies before the purchaser leaving issue, such issue shall represent the ancestor in infinitum (subject to the preceding rules).

Those related by the half blood to the purchaser are admitted to the inheritance immediately after those of the same degree of the whole blood.

The half blood were entirely excluded.

[The preference of males to females and the custom of primogeniture have their origin in feudal principles, as no female could succeed to a proper feud, and the nature of military feuds rendered it more beneficial to the lords that fiefs should descend to the eldest son. To these feudal principles also is to be credited the exclusion of the half blood, in accordance with the rule that the heir should be of the same blood, *i.e.* lineally descended from the supposed original grantee.]

8. On failure of heirs of last purchaser descent is traced from person last entitled.

'Feodum novum ut antiquum.'

If a vassal died seised of a feud of his own acquiring it could only descend to his own offspring (feodum novum). If, however, the feud was granted to an

ancestor of the vassal, it might, on the death of such vassal, descend to his brother, as being of the blood of the original grantee.

Hence arose the practice of granting a feodum novum ut antiquum, *i.e.* to be held *as if* it were descended from an ancestor, and accordingly descendible to collateral heirs of the vassal.

2. Title by Escheat.

[By Blackstone included under Titles by Purchase, but more properly assigned by Stephen to titles by Act of Law as opposed to those by Act of Party.]

Escheats are founded upon the single principle that the blood of the person last seised in fee simple is utterly extinct and gone, and as a result of the consequent failure, the inheritance reverts to the lord of the fee, the original grantor.

Escheats were divided into those taking place—

1. Propter defectum sanguinis, or entire failure of heirs to the tenant.

2. Propter delictum tenentis, or attaint of the blood of the tenant.

The following classes were also excluded from succession, so as to cause escheats, though the stringency of the law has in several cases been relaxed:—

1. Monsters, not of human form.

2. Bastards, being nullius filii, are held to have no inheritable blood.

[The civil law would admit a bastard to the inheritance if its mother was after its birth married to the father. The English Law has consistently refused to recognize this principle except in one case—that of a bastard eigné and mulier puisné, which is as follows:—

If a man has a bastard son (bastard eigné), and subsequently marrying the mother has a second son (mulier puisné), then if the elder son enters upon the inheritance at his father's death and dies seised of it, so that the inheritance descends to his issue, in this case the mulier puisné, or second son, and all other heirs are barred of all their rights of succession.]

3. Aliens were formerly incapable of taking by descent or of inheriting, but the Naturalization Act, 1870, removes all incapacities of aliens, and places them for all purposes of succession to real property on the same footing as natural-born subjects.

Escheat propter delictum tenentis:—

By attainder for treason or other felony, the blood of the person attainted is so corrupted as to be rendered no longer inheritable.

Escheat consists in the blood of the tenant being corrupted, and the original donation of the feud thereby determined, it being always granted to the vassal on the implied condition of dum bene se gesserit. Escheat, therefore, is an advantage to the immediate lord of the fee.

Distinction between escheat and forfeiture:—

Forfeiture, on the other hand, was of Saxon origin. In case of treason an offender's lands were forfeited to the Crown for ever, and in case of felony for a 'year, a day, and waste.'

Escheat acted in subordination to forfeiture.

Moreover, forfeitures only affected estates actually vested in the offender at the time of the offence. Escheat rendered the blood of the offender altogether corrupted, so that descent could not be traced through him.

[By Stat. 33 & 34 Vict. c. 23, no conviction for treason or felony shall cause attainder or corruption of blood or any forfeiture or escheat.]

For custom and dower v. pp. 32, 33.

CHAPTER XVI.—(Of title by occupancy.)

TITLES BY ACT OF PARTY.

1. Title by Occupancy.

Occupancy is the taking possession of those things which before belonged to nobody, with the intention of acquiring the property in them.

['The advised assumption of physical possession.'—Maine. The Roman Law maxim is, 'Quod nullius est id naturali ratione occupanti conceditur.']

The right of occupancy was formerly exercised in a single case only—that of the grantee of an estate pur autre vie dying in the lifetime of the cestui que vie. If the grant did not mention the word 'heirs,' there was nobody entitled, as the grantor had parted with all his interest for the lifetime of the cestui que vie. The property accordingly could be seized by the first occupant, who was called the general or common occupant. If, however, the heir was mentioned in the original grant, then he entered as a 'special occupant,' by virtue of the original grant.

Common occupancy is practically abolished by the Statutes 29 Car. II. cap. 3, 14 George II. cap. 20, 7 Will. IV. and 1 Vict. cap. 26, which render estates pur autre vie devisable by will, and, in default of such disposition, order that they shall be considered assets in the hands of the executor.

Alluvion and Dereliction.

In case of lands gained from the sea, or formed by alluvion on the bank of a river, the rule is, that if the gain be gradual, it accrues to the owner of the adjoining lands; and, similarly, in case of gradual loss of land, which is borne by the owner of the adjoining land. The maxim is 'De minimis non curat lex.' If the alluvion or dereliction be sudden and considerable, it accrues to the sovereign as lord paramount and owner of the soil.

In case of an island being formed in a stream, it belongs to the proprietor of the nearest bank; if formed in the middle, it belongs equally to the owners on either side.

The rules as to occupancy in English Law are similar to and probably derived from those of the Civil Law.

CHAPTER XVII.

2. Title by Prescription.

Title by prescription is that whereby a man holds who can show no other title to what he claims than that he and those under whom he claims have immemorially enjoyed it.

The time of legal memory is the beginning of the reign of Richard I.; but Courts were accustomed to presume a usage immemorial which had existed for a reasonable time, such as twenty years.

The rules as to prescriptions are contained in the Statutes 2 & 3 Will. IV. cap. 71,

What could be claimed by prescription (at Common Law).

Incorporeal hereditaments only, for no prescription could give a title to land and other corporeal things of which more certain evidence may be had. A prescription could not be for anything which cannot be raised by grant, for every prescription presupposes a grant to have existed. What is to arise by matter of record, also, could not be claimed by prescription. No claim by prescription or custom to any common or profit shall, after thirty years' enjoyment, be defeated by showing only that such right was first enjoyed at any time previous to such thirty years.

After sixty years' enjoyment the right is indefeasible, unless it appear to have been enjoyed by consent or agreement in deed or writing.

For easements, ways, and watercourses, the periods are twenty and forty years respectively.

The right to lights is indefeasible after twenty years' enjoyment.

[By 37 & 38 Vict. c. 57, no action can be brought for the recovery of land or rent but within twelve years from the time at which the right to such land or rent accrues. If at the accruing of the right the person is under any disability, a further period of six years is allowed after the termination of such disability, but no action whatever can be brought after thirty years although disability should continue the whole of that period.]

CHAPTER XVIII. (Title by Forfeiture.)

3. Title by Forfeiture.

Forfeiture is a punishment annexed by the law to some illegal acts, whereby the tenant loses all interest in his lands.

Lands, tenements, and hereditaments may be forfeited in the following ways:—

1. By crime; 2. By wrongful alienation; 3. By lapse, *i.e.* non-presentation to a benefice; 4. By simony; 5. By non-performance of conditions; 6. By waste; 7. By breach of copyhold customs; 8. By bankruptcy.

1. By crime.

Forfeitures for this cause would be more properly treated in the law of crimes.

By 33 & 34 Vict. cap. 23 forfeiture for treason and felony is abolished.

2. By alienation contrary to law.

[Formerly forfeiture was caused by conveyance of lands to an alien, but the Naturalization Act, 1870, removes the incapacities of aliens to hold real property in England.]

Alienation in Mortmain.

Alienation in mortmain (mortua manu) is conveyance to any corporation, sole or aggregate, ecclesiastical or temporal.

[The disadvantage to the lords (and more particularly to the king as lord paramount) from the practice of alienation in mortmain was that such feudal dues as wardship, marriage, reliefs, &c., were not in their nature payable by corporations, and so the lands were held in dead hands, *i.e.* in hands that paid no services.]

The history of alienation in mortmain is that of a series of legislative enactments, and of a corresponding series of evasions on the part of the ecclesiastical lawyers.

1. From the earliest times corporations required a licence to receive gifts in mortmain.

If this licence could not be obtained, the alienor made a grant to the corporation, and then received his land back instantly to hold of the corporation; then by means of some other forfeiture, escheat, or surrender on the part of the alienor, the corporation took as immediate lords of the fee.

2. The second charter of Henry III. forbade religious corporations aggregate to take gifts in mortmain.

Bishops and other corporations sole accordingly continued to take these gifts.

Corporations aggregate evaded the charter by buying in lands that were *bonâ fide* held of themselves, or by taking long terms—a thousand years or more.

3. The Statute De Religiosis, 7 Edw. I., forbade corporations sole or aggregate to take in any way under pretence of gift or term of years.

This was evaded by means of fictitious actions brought against the tenant, who by fraud and collusion made no defence, and suffered the lands to be adjudged to the corporations who *recovered* the land on a supposed prior title. These collusive actions were styled *recoveries*.

4. The Statute of Westminster the Second, 13 Edw. I. cap. 32, ordered that all recoveries should be tried by a jury, and if the corporation was entitled to the seisin, it was to recover it; otherwise that the land should be forfeited.

The ecclesiastical lawyers now invented a new form of conveyance, whereby lands were granted not to them-

selves directly, but to nominal feoffees to the use of the religious houses. These uses being enforced by the Courts of Equity, the rents and emoluments were practically the property of the cestui que use.

5. The Statute 15 Richard II. cap. 5 rendered uses subject to the rules as to mortmain, ordered that all lands then held to uses should be amortised by licence from the Crown or sold to private persons.

Civil and lay corporations were also brought within the scope of the Mortmain Laws.

Lands were given to private persons for 'superstitious' uses, being made liable to charges for chantries, services, and the like.

6. The Statute 23 Henry VIII. cap. 10 declared that all grants to superstitious uses should be void.

It was still possible to give land to charitable uses, but to prevent improvident deathbed dispositions the Mortmain Act (9 George II. cap. 36) was passed.

7. The Mortmain Act (9 George II. cap. 36) provides that no land shall be given or charged for any charitable uses unless by deed executed twelve months before the death of the grantor, enrolled six months after its execution.

Various modifications and exceptions, mostly in favour of colleges, schools, museums, and similar institutions, have been made by several statutes—the principal of which are, 9 George IV. cap. 85; 4 & 5 Vict. cap. 38; 15 & 16 Vict. cap. 49; 17 & 18 Vict. cap. 112; 24 Vict. cap. 9; 27 Vict. cap. 13; 33 & 34 Vict. cap. 34.

See also *Williams on R. P.*, part I., cap. iii.

Disclaimer.

Disclaimer consists in the neglect or refusal of a tenant to pay the services due to the lord, and the subsequent disclaiming of the tenant, upon action brought, to hold of the lord.

Forfeiture of a particular estate might also be incurred by a tenant who made an alienation of a greater interest than the law permitted him to make—thus, if a life tenant conveyed an estate in fee, his estate was forfeited to the person next entitled. The Statute 8 & 9 Vict. cap. 106, however, provides that 'no feoffment shall have a tortious operation.'

3. By lapse.

Lapse occurs when the right of presentation to a church accrues to the ordinary by neglect of the patron to present, to the metropolitan by the neglect of the ordinary, and to the sovereign by neglect of the metropolitan.

The time allowed for presentation is six months.

4. By simony.

Simony is the corrupt presentation of any one to an ecclesiastical benefice for money, gift, or reward; it is so called from the sin of Simon Magus.

The general effect of various statutes on the subject is to forbid (under penalty of forfeiture of the presentation to the Crown) the purchase of the next presentation by a clerk, or, if the benefice be vacant, by any other person.

5. By non-performance of conditions.

The nature of these forfeitures was described in the Chapter on Estates upon condition, *supra*, page 37.

6. By waste.

Waste (vastum) is the spoil or destruction of houses, gardens, trees, or other corporeal hereditaments to the disherison of the remainderman or reversioner in fee simple or tail.

Voluntary waste consists in the commission of an act—such as cutting down timber.

Permissive waste consists in the omission of a requisite act—as allowing a house to go to ruin.

The principal acts of waste are destroying houses, opening the land for minerals, and cutting down timber.

If the tenant hold '*without impeachment of waste*,' he may cut down timber and open mines for his own benefit, and the property in the minerals and timber severed from the land is in such tenant.

If, however, the tenant hold merely without *impleadment* of waste, the property in the things severed is not in him.

The Courts of Equity will, however, interfere to restrain the tenant from destroying the mansion-house or any ornamental timber, the spoiling of which accordingly receives the name of Equitable Waste.

7. By breach of custom in copyhold estates.

Copyhold estates being held according to the customs

of their respective manors, are liable in addition to forfeiture for breach of those customs, as well as for the general causes of forfeiture incidental to other estates.

8. By bankruptcy.

The whole estate of a bankrupt becomes vested in assignees for the benefit of his creditors, even without his participation or consent.

CHAPTER XIX.

4. Title by Alienation.

Feuds were originally strictly hereditary, and could not be alienated by the tenant without the consent of the lord of whom he held, and the heir who would take after him.

The effect of alienation (or the substitution of one feudal tenant for another) was obtained by subinfeudation, or the granting of part of the feud by the tenant to another tenant under him, the under-tenant thus becoming the vassal of the subinfeudating tenant.

The lord also could not put any one in his own place without getting the consent of the tenant; this consent was styled '*attornment*.'

Gradual encroachments on the strict feudal rule.

1. Henry I. allowed a man to dispose of lands which he had himself purchased.

2. Afterwards a man was allowed to alienate if he had purchased '*to himself and his assigns.*'

3. Henry III. enacted that a subinfeudating tenant should retain sufficient lands in his own hands to answer for the services to his lord.

4. The Statute of 'Quia Emptores,' 18 Edward, cap. 1, enabled all except Crown tenants to alienate, and thereby to put other tenants in their own place to hold of the original lord.

Subinfeudation was thus abolished, and every alienation now consists in the substitution of a new tenant, to hold by similar services to those rendered by the former one.

5. 1 Edward III. permitted Crown tenants to alienate on paying a fine.

6. Fines upon alienation were abolished by 12 Car. II. cap. 24, in all cases of freehold tenure.

[*Alienation.*

The subject will be treated as follows:—
1. The person by whom alienation can be effected.
2. The manner in which alienation can be effected.]

1. Who may aliene and to whom?

All persons are, *primâ facie*, capable of purchasing or conveying, unless the law has laid them under disabilities.

The principal exceptions are—

(α) Persons attainted of treason or murder. (But *v. supra*, pp. 58, 59.)

(β) Corporations, lay and religious (*v. supra*, pp. 59–61.)

(γ) Idiots and persons of non-sane memory, infants and persons under duress.

The general rule is, that the contracting party is not to suffer for acts done while labouring under incapacity, but may void or ratify his acts so done.

(δ) A feme coverte formerly could not convey, but now may do so, by a deed separately acknowledged, according to the provisions of various recent enactments.

(ε) Aliens who formerly could not hold lands were relieved from all disabilities by the Naturalization Act, 1870.

CHAPTER XX.—(Of alienation by deed.)

Conveyances or common assurances are of four kinds—

1. In Pais, or by Deed—an assurance transacted between two or more persons in pais, in the country, that is (in the eye of the law), upon the very spot to be transferred;

2. By matter of Record, or by an assurance transacted in a Court of Record;

3. By special custom;

4. By devise.

1. Of alienation by deed.

(*a*) The nature of a deed.

A deed is a writing sealed and delivered by the parties.

A deed being the most solemn and authentic act a man can perform, is said to act by estoppel; that is, a

man is not permitted to aver or prove anything in contradiction to what he has stated by deed.

Indentures.

When deeds were made by more parties than one, there should be as many copies as parties, and each copy should be cut or indented, so as to tally with its counterpart; for this reason such deeds received the name of indentures. The necessity of indenting is now abolished.

Deeds poll.

Deeds purporting to be made by one *party* only were *polled* or shaved quite even, there being no necessity for indenting.

(β) The requisites of a deed.

1. The parties must possess the necessary capacity, and there must be a thing capable of being contracted for.

2. The deed must be written or printed upon paper or parchment, but it may be in any character or language.

3. The matter must be legally and orderly set forth.

[For the formal parts of a deed *vide infra*, p. 68.]

4. It should be read at the request of any of the parties.

5. It must be sealed and delivered.

The effect of the Statute of Frauds and others is to require signing in certain contracts regarding land, and the result is, that it is usual that all deeds should be signed as well as sealed.

See *Williams, R. P.*, part I. cap. vii.

6. It must be delivered, and from this act the deed dates. A deed may be delivered absolutely to the grantee, or conditionally to a third person, to be held as an *escrow*, till the condition is accomplished, upon which it becomes a deed.

7. It must be attested or executed in the presence of witnesses.

(γ) The manner in which a deed may be avoided.

A deed is void if it lacks any of the essential requisites mentioned above, and it may also be voided—

1. By erasure, interlining, or alteration in any material part.

2. By breaking or destroying the seal, with the intention of avoiding the deed.

3. By delivery for the purpose of being cancelled.

4. By the disagreement of those whose agreement is necessary for the validity of the deed.

5. By the judgment or decree of a competent Court.

Formal parts of a deed.

1. **The premises**, reciting the names and number of the parties, with the reasons upon which the transaction is founded. Then follows the certainty of the grantor, grantee, and thing granted.

2, 3. The **Habendum** and **Tenendum** — the former describing the estate or interest granted by the deed, the latter the tenure by which it was held.

4. The terms of the stipulation upon which the

grant is made, first of which is the **reddendum** or reservation, consisting of rent (reditus or render).

5. Another of the terms on which a grant is made is a **condition** upon which the estate granted may be defeated.

[6. *Warranty.*

The clause of warranty formerly followed in this place; by this clause the grantor for himself and his heirs warranted and secured to the grantee the estate granted. The effect of warranties has been practically removed by the Stat. 3 & 4 Will. IV. cap. 27 and cap. 74.]

7. **Covenants.**

By covenants the parties may stipulate for the truth of certain facts, or may bind themselves to do or give something. Breach of covenant gives a right of action for damages against the offender.

Certain covenants relating to the land are said to *run with the land*; that is, their benefits and liabilities attach to the successive owners of the land and representatives of the original contracting parties.

The usual covenants are for quiet enjoyment, payment of rent, proper repairs, &c. &c.

8. **The conclusion,** mentioning the execution and date of the deed.

[The real date of a deed is the day upon which it is delivered, and provided that date can be proved, it is immaterial if a false date be mentioned in the instrument.]

Deeds employed for the alienation of real estates are called '*conveyances.*' Conveyances may be divided into those at Common Law and those deriving their efficacy from the Statute of Uses.

I. Conveyances at Common Law.

Of these some are *primary*, as by them an estate is created; others are *derivative* or secondary, whereby the original estate is enlarged, restrained, transferred, or extinguished.

The following are **original conveyances**:—

1. Feoffment.

The most ancient form of conveyance. It was the means whereby any freehold estate in possession in a corporeal hereditament was transferred. It consisted in the use of words of donation and the investiture of the donee with the seisin or feudal possession. This ceremony was termed *livery of seisin*, and might be either (1) *in deed, i.e.* actually on the spot, or (2) *in law, i.e.* in sight of the land only.

The Stat. 8 & 9 Vict. cap. 106, by enacting that corporeal hereditaments should lie in grant as well as in livery, rendered feoffment (with livery) unnecessary, and a deed of grant is now sufficient for the conveyance of freehold estates.

2. Gifts (*donationes.*)

The term 'donatio' is properly applied to the creation of an estate tail, as feoffment was to that of an estate in fee simple.

3. Grants (*concessiones.*)

The regular Common Law method of transferring incorporeal hereditaments and such things whereof no

livery could be had—for example, corporeal things in expectancy. By 8 & 9 Vict. corporeal hereditaments are deemed to lie in grant as well as in livery.

4. Leases.

A lease is a conveyance of lands or tenements (usually in consideration of rent or other reservation), made for years, for life, or at will, but always for a less time than the lessor has in the premises. If it be for the whole interest, it is more properly an assignment. The usual words of operation in a lease are 'demise, grant, and to farm let;' but these are not absolutely necessary.

Entry by the lessee is necessary to complete his title, his interest before doing so being styled his 'interesse termini.'

5. Exchange.

An exchange is a mutual grant of equal interests, the one in consideration of the other. Entry must be made on both sides, in order that the exchange may be valid.

If either party is evicted after an exchange, through a defect in the other's title, he may return back to the possession of his own by reason of the warranty implied in every exchange.

6. Partition.

Partition consists in the division by two or more joint tenants, coparceners or tenants in common of lands, so as to hold in severalty.

Exchanges and partitions are now easily effected through the agency of the Enclosure Commissioners, under 8 & 9 Vict. cap. 118.

The following are secondary or derivative conveyances.

7. Release.

A release is a discharge or conveyance of a man's right in lands or tenements to another that hath some former estate in possession.

A release may—

1. Enlarge a previous estate, as where a remainderman in fee releases to the life tenant; or

2. Pass an estate, as where one coparcener releases his right to another; or

3. Pass a right, as where a man wrongfully possessed releases his right to the disseisor; or

4. Extinguish a right, as where any tenant for life leases to A. for life, remainder to B. and his heirs, and then releases to A. This extinguishes any right to the reversion, and enures to the advantage of B.'s remainder as well as A.'s particular estate.

8. Confirmation.

This is a conveyance of an estate or right in esse, whereby a voidable estate is made sure and unavoidable.

9. Surrender.

Surrender ('sursum redditio') is the yielding up of an

estate for life or years to him that hath the immediate reversion or remainder.

[Surrender consists in the falling of a less estate into a greater; Release, the descending of a greater estate upon a less.]

10. Assignment.

An assignment is properly the transfer of one's whole interest in an estate, and the assignee stands to all intents and purposes in the place of the assignor.

11. Defeazance.

A defeazance is a collateral deed made at the same time as some conveyance, containing conditions upon the performance of which the estate then created may be *defeated* or undone.

II. Conveyances under the Statute of Uses.

Origin of uses.

Uses were introduced into England by the ecclesiastical lawyers in the reign of Edward III. to evade the provisions of the Statutes of Mortmain. They obtained grants not to religious houses but to *the use of* the religious houses; these uses were held by the Chancellors (who were clerics) to be binding in conscience, and were accordingly enforced in the Courts of Equity.

The use being deemed a separately existent thing from the possession was devisable by will, and the advantages of the system were so great that during the

Wars of the Roses uses became almost universal, as they were not then liable to forfeiture for the acts of the cestui que use.

In the reign of Edward IV. consequently the rules as to uses were more accurately defined.

1. It was held that nothing could be granted to a use whereof the use is inseparable from the possession, *e.g.* ways, commons, &c.

2. A use could not be raised without sufficient consideration.

3. Uses were descendible according to the rules of the Common Law.

4. They were assignable by secret deed, and were devisable by will.

5. They did not escheat for felony or defect of blood.

6. They were not liable to curtesy or dower.

7. They were not liable to extent by elegit for the debts of the cestui que use.

These doctrines practically made the cestui que use the real owner of the estate. Lord Bacon complained that 'A man that had cause to sue for land knew not against whom to bring his action or who was the owner of it. The wife was defrauded of her thirds; the husband of his curtesy; the lord of his wardship, relief, heriot, and escheat; the creditor of his extent for debt, and the poor tenant of his lease.'

Accordingly the Statute 27 Henry VIII. cap. 10 (Statute of Uses) enacted that where any person shall be seised of lands to the use, confidence, or trust of any person or body politic, the person or corporation entitled

to the use shall from thenceforth stand and be seised of the land for the like estates that they had in the use, and that the estate of the person seised to uses shall be deemed to be in him or them that have the use.

Thus the interest of the cestui que use became a *legal* instead of an equitable ownership.

[*Springing uses.*

The statute might take effect upon a use springing up upon some future contingency. As when lands are conveyed to the use of A. and B. after a marriage shall take place between them.

Shifting uses.

Similarly a use, though executed, could change from one person to another subsequently upon a given event; as in a conveyance to the use of A. till he married and then to the use of B.

Resulting uses.

When the use expires or cannot vest, it returns back to him who raised it, and is styled a resulting use. As, for example. Conveyance by A. to his intended wife for life. Here before marriage, and after the wife's death, the use results to A.]

The following rules of construction adopted by the Courts practically destroyed the effect of the Statute of Uses.

1. That no use could be limited on a use, *i.e.* that in a feoffment to A. and heirs, to the use of B. and heirs, in trust for C. and his heirs, the statute only executed the first use. B. thus took the legal and C. the equitable estate in fee.

These trusts upon which the statute did not operate are the trusts of our modern English law.

2. That the statute only operated when persons were *seised* to the use of another. All chattel interests of

which the owners are technically 'possessed' were unaffected by the statute.

The system of trusts has been carefully elaborated by the Chancery Courts during the last two centuries, its evils removed, and its advantages developed.

Forms of conveyance under the Statute of Uses.

12. Covenant to stand seised to uses.

A man may covenant that he will stand seised to the use of some relation by blood or marriage, and here the consideration being a good one, the statute at once executes the use, and makes the recipient's estate a legal one.

13. Bargain and sale.

The bargainor bargained and sold land, *i.e.* undertook to convey it for valuable consideration to the bargainee, and thus became seised to the use of such bargainee. The statute immediately executed the use, and the bargainee's estate was complete.

To prevent the secret conveyances effected as above, the Statute of Enrolments, 27 Henry VIII. cap. 16, directed that all bargains and sales of freeholds should be duly enrolled within six months.

14. Lease and release.

Secret conveyances by bargain and sale being checked by the Statute of Enrolments, a new device was invented by Serjeant Moore. It was as follows:—A bar-

gain and sale for one year is made to the bargainee, who by the operation of the Statute of Uses takes the legal estate for one year, and thus being in possession is qualified to take by *release* the rest of the bargainor's interest. Lease and release continued to be the prevalent mode of conveyance till Statute 4 & 5 Vict. cap. 21, which rendered a release alone as effectual as a lease and a release combined.

15, 16. Deeds of appointment to uses, revocation of uses, and new appointment to uses.

These deeds are founded on powers reserved in a previous instrument raising the original use. These powers are largely employed in various ways in modern conveyancing. See *Williams on R. P.*, part II. chap. iii.

Besides the above deeds, which are used to convey lands, there are others whose function is to charge or encumber lands, and to discharge them again.

The principal are—

1. An obligation or bond.

This is a deed whereby the obligor binds himself, his heirs, executors, and administrators, to pay a certain sum of money on a day fixed either absolutely or conditionally. If the payment is on condition, then upon non-fulfilment of such condition the bond becomes absolute.

As the heir is bound to the extent of any real assets he may have by descent, a bond forms a collateral charge on land.

2. A recognizance.

A recognizance is an acknowledgement of a former

debt on record, and therefore an obligation of record. It is entered into before a Court of Record or an authorised magistrate. The obligor binds himself to perform some act—such as appear for judgment, keep the peace, or the like.

3. A defeazance on a bond or recognizance is a condition which being performed defeats such bond or recognizance.

CHAPTER XXI.—(Of alienation by matter of record.)

Conveyances by matter of record.

[These are such conveyances as are effected, preserved and substantiated by the sanction of a Court of Record.]

1. Private Acts of Parliament.

These are extraordinary remedies applied when the powers of other Courts are unable to give relief.

2. Grants by the King or Queen.

No freehold may be given to the King or derived from him except by matter of record. The King's grants are contained in *letters patent*, open letters, literae patentes, not sealed up but exposed to open view, and usually addressed to the Queen's subjects generally. Such charters are recorded in the patent rolls.

[Other letters of the sovereign directed to particular persons are closed up, sealed on the outside, and are called writs close, literæ clausæ. These are recorded in the close rolls.]

[Grants made by the King, unlike those by a subject, are construed strictly against the grantee, and not against the grantor.]

3. Fines. (See *Williams on R.P.* part I. cap. ii.)

A fine consists in a fictitious suit, commenced and compromised by permission of a Court of Record, whereby the lands in question are acknowledged to be in the right of one of the parties. It is so called because it puts an end not only to the suit thus commenced, but to all other disputes touching the same matter, and to all claims not made within a year and a day. This time was extended to five years by Statutes of Rich. III. and Henry VII., and by these statutes it was required that all fines should be *levied with proclamations*, in order that claims might be barred after five years.

Since the reign of Henry VIII. fines were employed as a means of barring an entail.

Fines as well as recoveries (*v. infra*) were abolished by 3 & 4 Will. IV. cap. 74, which substituted for them a deed enrolled.

4. Common recoveries.

A common recovery was a fictitious action carried through all its stages, whereby the lands were *recovered* from the tenant by the plaintiff, in whom an absolute fee-simple vested. The mode of procedure was as follows:—

The tenant in tail, upon having a collusive action for the land brought against him by the demandant, required another person, who was supposed to have originally warranted the tenant's title, to defend the title he had so warranted. This was called vouching

to warranty. The vouchee appeared to defend the title, but upon the plaintiff craving leave to impart or speak with the vouchee in private, the latter disappeared, and the plaintiff was able to recover judgment for the lands against the tenant in tail, who in turn had a judgment to recover lands of equal value from the vouchee. The plaintiff thus got the fee simple of the lands, and could re-convey that estate to the tenant in tail.

Recoveries were abolished by 3 & 4 Will. IV. cap. 74.

[Under this head may also be classed, Conveyances effected by orders of the Court of Chancery, and awards of Enclosure and Copyhold Commissioners, and also conveyances effected in the form established by 25 & 26 Vict. cap. 53, for lands of which the titles are registered.]

CHAPTER XXII.—(Of alienation by special custom.)

Conveyances by special custom.

Surrender and admittance.

This is the proper method whereby the transfer of copyholds and lands of similar tenure is effected.

The alienating tenant surrenders his estate into the hands of the lord, by whom the new tenant, the surrenderee, is admitted. The surrender is effected by the symbolical delivery of a rod, a glove, or the like. The ceremony is founded on the theory that the estate is inalienable without the consent of the lord, though the lord's rights are now reduced to the smallest compass, the tenant being able to name his successor, and

to compel the lord to admit him on payment of the customary dues.

Copyholds are now devisable by will, and no previous surrender to the use of the devisor's will is necessary.

CHAPTER XXIII.—(Of alienation by devise.)

Conveyance by devise.

Testamentary devise.

Before the Conquest it seems that lands were freely devisable by will. The establishment of the feudal system, however, abolished this power of devise.

The introduction of the System of Uses practically made land alienable by testament, as the use could be freely bequeathed at the will of the testator.

The Statute of Uses, by converting uses into legal estates, again abolished testamentary alienation; but the consequent inconvenience was so great that the Statute of Wills (passed five years later), 32 Henry VIII. cap. 1, permitted tenants in fee simple to alienate by testament all their lands held in socage, and two-thirds of those held in knight-service. The Act 12 Car. II. cap. 24, by converting all knight-service lands into free and common socage, rendered such lands freely devisable.

[Gavelkind and Borough English lands have always been devisable by will, the custom having remained from the Saxon times in which these varieties of tenure originated.]

The Statute of Frauds, 29 Car. II. cap. 3, required all wills of lands to be in writing, signed by the tes-

tator (or by some other person in his presence and at his express direction), and to be subscribed in his presence by three or four credible witnesses.

[Who could be competent witnesses to a will?

A bequest to any of the witnesses was held by the courts to affect the competency of such witness, and in default of three competent witnesses the will was inoperative. To remedy this, the Stat. 25 George II. cap. 6 ordered that all bequests to witnesses should be void, and that while creditors should be competent witnesses, their credibility should be determined by the Courts.]

The Wills Act, 7 Will. IV. and 1 Vict. cap. 26, requires all wills to be in writing, signed at the foot or end thereof by the testator (or by some other person in his presence and at his direction); such signature to be made or acknowledged in the presence of two or more witnesses present at the same time, and attesting the will by signature.

Previous to this Act a testament was held to affect only those lands which the testator had at the time of making the testament, after-purchased lands descending to the heir-at-law. The Act, however, orders that every will shall take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears in the will.

Rules of construction for deeds and wills.

1. The construction must be favourable, reasonable, and as near to the intention of the parties as the law will admit. 'Verba debent intentioni inservire.

2. 'Quoties in verbis nulla est ambiguitas ibi nulla expositio contra verba fienda est'—where the intention is clear it must be followed; but that too minute a stress must not be laid on the strict and precise meaning of words—'Nam qui haeret in litera haeret in cortice.' Grammatical errors do not vitiate a deed.

3. The construction must be upon the *entire* deed—

'Nam ex antecedentibus et consequentibus fit optima interpretatio.'

4. Deeds are to be interpreted against the grantor and in favour of the other party—

'Verba fortius accipiuntur contra proferentem.'

5. That if words will bear two senses, one agreeable to and the other contrary to law, the former is to be preferred.

6. Of two repugnant clauses in a deed, the earlier should stand, and the later one be rejected. In a will the second clause is to be held good, and the first rejected.

7. A devise should be favourably expounded, to pursue, if possible, the will of the devisor, who may be presumed not to have had legal advice. Thus, a fee may by a devise be conveyed without words of inheritance, if an intention to pass such an estate is evident.

APPENDIX A.

Abbreviations used in the following pages.

O.L. = Oxford Pass School of Law.
O.J. = Oxford Honour School of Jurisprudence.
C.S. = Cambridge Special Examination in Law.
C.T. = Cambridge Law Tripos.
B. = Bar Examination.
S. = Solicitors' Final Examination for Admission.
O.C.L. = Oxford Examination for degree of B.C.L.

EXAMINATION QUESTIONS ON REAL PROPERTY LAW.

State and examine the principal heads of Blackstone's classification of law relating to things real.—O.C.L. 1875.

Give an outline of the divisions and subdivisions of things real.—C.S. 1874.

What is Blackstone's account of the origin of property? Give Maine's criticism on Blackstone's definition of occupancy.

To what extent is true ownership of things real known to the English law? What are the constituent elements in the idea of ownership?

Define accurately ownership or dominion.

What reasons have been given for the division of property into real and personal? At what time were the terms probably first employed?

Distinguish between lands, tenements, and hereditaments. What is the exact value in a conveyance of the words river, pool, and pond?

What is Blackstone's account of the origin of real property, of heriots, and of primogeniture? What objections may be raised against his views?—O.L. 1876.

What objection may be urged against the distinction between corporeal and incorporeal hereditaments?

Mention the principal classes of incorporeal hereditaments.

Explain the meaning of advowson collative, donative, modus decimandi, de non decimando, common of pasture, common because of vicinage.

Distinguish carefully between the various forms of rent.

Tenures.

Give a short account of the feudal law as introduced into England, and the alterations therein by statute.—B. 1875.

Enumerate the ancient English tenures, specifying in each case the nature of the services rendered.

What were the 'feudal incidents' in tenure by knight service?

What is meant by tenure and estate? Mention some of the principal ancient tenures, and state which of them are now found in England. Why was military tenure abolished, and when?—C.S. 1878.

In what essential particular did grand and petit serjeantry differ? What was the tenure by cornage?

When and how was tenure by knight service abolished? Enumerate the various tenures which survive at the present day.—O.P. 1875.

How far do socage and knight service tenure (1) agree, (2) differ?

'Lands are now usually held by one species of tenure; the principal exceptions are purely local.' Explain this statement fully.

What is the custom of gavelkind? Would gavelkind lands be correctly described as being held in free socage?

What constitutes a manor? Are the commons and wastes of a manor freehold or copyhold?—O.L. 1875.

Give some account of the constitution of a manor.—O.L. 1875.

Mention the principal statutes by which the theory of tenure has been broken in upon, indicating the special effect of each.—O.L. 1873.

Describe shortly the main characteristics of a manor. Prior to what date must all manors have been created? Give your reasons.—C.T. 1875.

What traces of the predominance of a particular class appear in the legislation of the reigns of Henry III. and Edward I.?—O.J. 1873.

What is the meaning of the following terms?—Base fee, frankalmoign, grand serjeantry, burgage tenure, Court baron.—O.C.L. 1874.

What steps led to the passing of the Stat. 12 Car. II., cap. 24, and what are its main enactments?—O.J. 1875.

Trace briefly the steps by which copyhold tenure has sprung from villenage. Distinguish between ordinary villenage and villein socage.

Distinguish carefully between tenure in frankalmoign and by divine service. Does either of these tenures now exist?

Estates.

What is the meaning of the word 'estate'? Describe clearly the classification of estates according to the quantity of the tenants' interest.—O.L. 1873.

Enumerate the different estates for which lands can be held.—B. 1875.

What at the present day are the principal marks of difference between a freehold estate in land and one less than freehold?—O.L. 1874.

Define an estate in fee simple, giving the exact meaning of the phrase, 'seised in his demesne as of fee.'

'The legislation of Edward the First's reign was the legislation of a class.' Explain this statement fully.

Explain the expressions fee simple (*a*) qualified, (*b*) conditional; fee-tail (*a*) general, (*b*) special; frank-marriage, common recovery, elegit, words of limitation.—C.S. 1877.

What words are necessary in a grant or donation to create an estate of inheritance?

Distinguish carefully between a base and a conditional fee.

State fully the causes which led to the passing of the Statute De donis.

Give a concise history of estates tail.—O.L. 1873.

State the mode of barring entails and remainders thereon expectant, as well formerly as at the present day.—B. 1875.

Give an account of the Statute De donis conditionalibus and the alteration produced by it. Are its provisions still in force?—C.S. 1878.

What was subinfeudation, and by what statute was it abolished?

What evils resulted from the Statute De donis, and what means were taken to avoid them?—O.L. 1876.

Define emblements. What are the other incidents of a life estate?

Explain what is meant by 'tenancy in tail after possibility of issue extinct.'

What are the requisites for a valid 'tenancy by the courtesy'?

Distinguish between 'a tenant in tail after possibility of issue instinct,' and a 'tenant for life.'—C.S. 1876.

When and how does an estate become liable to the rights of dower and courtesy respectively? What were the changes made by the Dower Act?—O.C.L. 1874.

Define dower at common law, and show how it has been modified by legislation. Give reasons for the differences that exist between the conditions of dower and tenancy by the courtesy.—O.P. 1875.

What alterations were made in the law of dower by Statute 3 & 4 William IV. cap. 105?

State precisely the effect of marriage upon the wife's freehold estate in lands.—O.J. 1875.

Can a lessee for 999 years grant a lease for life? Give reasons for your answer.—S.

What are the proper words of limitation used in a deed in creating estates in fee simple, in fee tail, and for life.—S.

Distinguish between an estate at will and an estate on sufferance.

What class of covenants is said to 'run with the land'? Who may sue and be sued in such covenants, and which of the rules upon the subject are derived from common law and statute law respectively?—O.C.L. 1874.

State, giving reasons, the effect of—

(1) Grant to X for life to the use of Y in fee.

(2) Demise to A so long as B shall live.
(3) An assignment of a term of 99 years to M for the use of N.
(4) Grant to S and T (husband and wife) and V and their heirs.—O.L. 1873.

A is tenant in tail of certain lands; he wishes to settle them as strictly as possible on his eldest son and his descendants, but to reserve to himself possession for life and the power of selling the whole or part. Describe fully the steps he must take and the form of the settlement.—O.L. 1873.

Explain the operation at law and in equity of a mortgage in fee. What is a second mortgage, and why is it an improper security for the investment of trust money?—C.T. 1872.

What will be the full effect of the following grants? Give reasons in each case:

(1) Lease for life of the grantor.
(2) Grant to A, remainder to B, remainder to eldest of A's sons who shall survive B.
(3) Devise to A, and if he die without issue to B.—O.L. 1876.

A, tenant for life of a farm, lets it for fourteen years to B, and dies two years before expiration of the lease; how, if at all, are the rights and obligations of A's executor, of B, and of the ultimate reversioner with reference to timber, crops, or rent, affected by his death?—O.L. 1873.

A takes a house from B on a verbal agreement to pay 50*l.* a year for it. What are the legal conditions of the tenancy so created?—O.L. 1876.

Explain fully the difference between vivum vadium (living pledge) and mortuum vadium or mortgage.—S.

What is a writ of elegit? How is it executed and what may be seized under it?

Distinguish between reversion and remainder.—O.L. 1876.

Define an estate in remainder, (*a*) vested, (*b*) contingent. Define an estate in reversion.—C.S. 1877.

State the principal rules for the creation of valid contingent remainders. Explain fully the use and meaning of the phrase scintilla juris.

Distinguish carefully between a contingent remainder and an executory devise.

What is the general principle of merger; to what exceptions is the rule subject?—C.S. 1877.

Explain the effect of the following cases:—

(1) A makes a parol agreement to let his farm for two years at rack rent to B.

(2) Grant to A for life, remainder to B for life, remainder to heirs of body of A, remainder to heirs of X in fee.—O.L. 1876.

Explain in detail the full effect of the following:—

(1) Grant to A for life, remainder to the heirs male of B.

(2) Lease to A for twenty years, to the use of B and his heirs.

(3) Lease to A for life, to take effect at the expiration of B's existing tenancy for years.

(4) Grant to A and B (husband and wife) and C jointly, remainder to heirs of the body of D, remainder to heirs of A.—O.P. 1875.

Distinguish accurately—

(1) Joint tenancy from tenancy in common.

(2) Legal estate from equitable estate.

(3) Escheat from forfeiture.

(4) Fines from recoveries.

(5) Contingent remainders from executory interests.—O.L. 1875.

What four principal properties has an estate in joint tenancy?

What rights of action in regard to waste and trespass have joint tenants, tenants in common and coparceners? —C.S. 1877.

What is meant by joint tenancy, and how may it arise? What is indicated by saying that joint tenants are seised per mie et per tout? Can joint tenants be entitled for unequal interests?—C.T. 1876.

Explain briefly the four unities of a joint tenancy.—C.S. 1875.

An estate is given to A and B (husband and wife), and to C as joint tenants in fee. How do A and B take as between themselves and against C?—C.S. 1876.

In what ways may (1) joint tenancies and (2) tenancies in common be created and dissolved?

In what respects do coparceners agree with, and in what do they differ from joint tenants?

Titles.

What is the most convenient arrangement which you can suggest for the topics which are comprised under the head of titles in English land law?—O.J. 1876.

Define title and compare it with the titulus of Roman law.

What have been and what now are the principal modes of acquiring estates in land?—O.L. 1873.

Compare the old rules of descent with those introduced by Stat. 3 & 4 Will. IV. cap 106.

Distinguish carefully between escheat and forfeiture, showing how the former acted in subordination to the latter.

How does Blackstone explain the exclusion of the half-

blood and of the lineal ancestor under the old law of inheritance?—O.L. 1876.

A man dies intestate having freehold and leasehold lands of his own, and a share of freehold and leasehold lands purchased by himself and his partner in business. He leaves two sons, two daughters, and a wife. How will his property be apportioned?—C.S. 1878.

Explain—

(1) 'The word heirs is a word of limitation and not of purchase.'

(2) 'The descent shall be traced from the last purchaser.'

(3) 'Seisina facit stipitem.'

(4) 'Haereditas nunquam ascendit.'

Explain what is meant by—

(1) Feodum novum ut antiquam.

(2) Bastard eigné and mulier puisné.

(3) De minimis non curat lex.

Define occupancy. For what reasons are the rules as to occupancy historically interesting?

Distinguish carefully between the limitation of actions and the acquisition of rights by prescription.

What class of persons are under disabilities as to making or receiving grants to lands? State the extent of the disability in each case and the reason for it.—O.L. 1875.

Sketch the history and discuss the policy of restraint on alienation in mortmain.—O.L. 1873.

Enumerate the statutes which have been passed to restrain the acquisition of lands by corporations. What is the object of the Act 9 Geo. II. cap. 36?—O.L. 1874.

State the causes which led to and the provisions of—

(1) Statute Quia emptores.

(2) Statute De donis conditionalibus.—C.S. 1876.

State the rules for the construction of a deed. How do they differ from those of a will?—O.L. 1876.

What are the formal parts of a deed? Explain what is meant by operative words.

Explain fully what is meant by the statement that corporeal hereditaments lie in a grant as well as in livery.

Distinguish carefully between assignment and a release.

What was the most usual method of conveying lands before the Statute 4 & 5 Vict. cap. 21? Explain precisely how it came into existence and what was the way in which it operated.—O.C.L. 1874.

Explain and comment on the following:—

(1) Covenants run with the land.
(2) No feoffment can have a tortious operation.
(3) Verba fortius accipiuntur contra proferentem.—O.P. 1875.

Explain the origin, nature, and history of uses and trusts. What is a resulting use?—C.S. 1877.

Explain the nature of a use and the purport of the Statute of Uses. What was the result of the doctrine that a use could not be limited upon a use? Compare the new interest thus created with the old equitable estate.—C.S. 1876.

State and explain exactly the provisions of the Statute of Uses.—O.L. 1876.

'At Common Law an estate of freehold cannot be created to take effect in futuro.' What is the reason of this, and how can it be done by means of the Statute of Uses?—O.L. 1876.

Describe clearly a bargain and a sale, and a lease and release at common law.—O.P. 1875.

State exactly the modes in which a conveyance of lands could be effected by—

(1) Bargain and sale.
(2) Covenant to stand seised.
(3) Bargain and sale for years and release.
(4) Deed of grant.—O.J. 1873.

A, seised in fee, bargains and sells to B for a year. Show how, by virtue of the Statute of Uses, the legal estate is thereby transferred to B without entry.—C.S. 1877.

By what means is it possible to put an end to leasehold and copyhold estates respectively?—O.L. 1876.

Describe the steps by which land came to be devisable by will.—O.L. 1876.

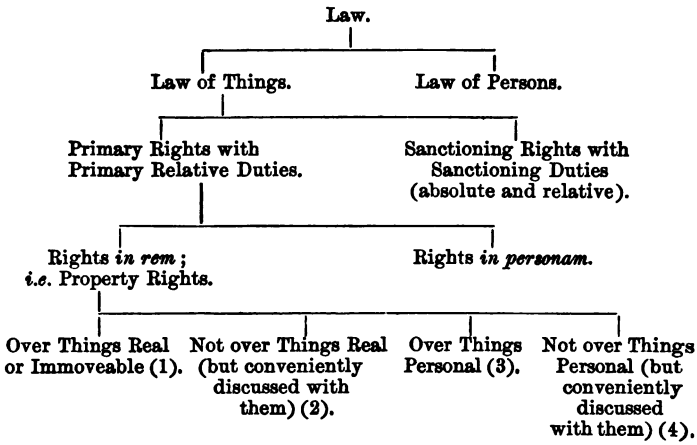
What are the formalities necessary for making a valid will?—O.L. 1876.

Trace the history of the law relating to the form of wills.—O.J. 1876.

APPENDIX B.

TABLE I.

Showing the place of Real Property Law in a Legal System.



(1) and (2) form the subjects of Real Property Law.
(3) and (4) „ „ Personal Property Law.

TABLE II.

Showing the place of Real Property Law in Blackstone's System.

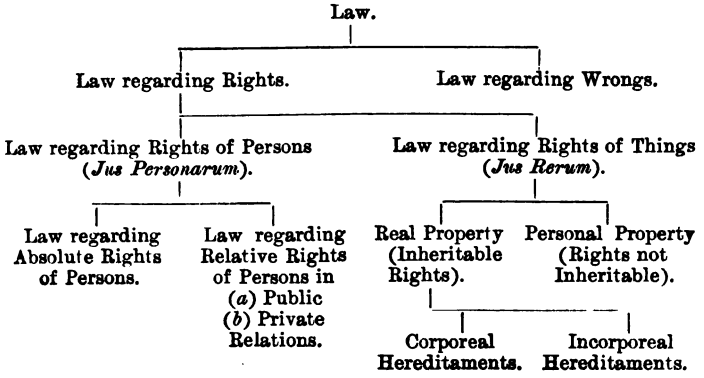


TABLE III.

Showing Blackstone's method of treating the Law of Real Property.

(*a.*) Things Real (the subject of Real Property Law) are treated with regard to
- (*b*) The Tenures by which they are holden.
- (*c*) The Estates which may be had in them.
- (*d*) The Title to them, and the manner of acquiring and losing it.

TABLE IV.

Blackstone's Division of Things Real.

- (*a*) Things Real
  - Corporeal Hereditaments
    - Advowsons
      - Presentative.
      - Collative.
      - Donative.
    - Tithes
    - Commons
      - of Pasture.
      - of Piscary.
      - of Turbary.
      - of Estover.
  - Incorporeal Hereditaments
    - Ways
    - Offices
    - Dignities
    - Franchises
    - Corodies
    - Annuities
    - Rents
      - Rent Charge.
      - Rent Service.
      - Rents of Assize.
      - Rack Rents.
      - Fee Farm Rents.

TABLE V.

Illustrating Blackstone's Account of Tenures.

- (*b* *) Tenures by which Things Real may be holden.
  1. Chivalry or Knight Service (Services Free and Uncertain).
  2. Free-Socage (Services Free and Certain).
  3. Villenage (Services Base and Uncertain) (= Modern Copyhold).
  4. Villein Socage (Services Base and Certain).
- Spiritual Tenures
  - In Frankalmoign.
  - By Divine Service.

* See Table III.

TABLE VI.

Blackstone's Classification of Estates.

(c *) Estates in Things Real considered with regard to

1. The quantity of the Tenant's Interest.
   - Freehold.
     - Freehold Estates of Inheritance.
       - Absolute.
       - Limited.
         1. Base Fees.
         2. Conditional Fees (Estate Tail).
     - Freehold Estates not of Inheritance (Estates for Life).
       - Conventional.
       - Legal.
   - Less than Freehold.
     1. For Years.
     2. At Will.
     3. On Sufferance.
2. The Time at which Interest is enjoyed.
   1. In Possession.
   2. In Expectancy.
      1. In Remainder.
         - Vested.
         - Contingent.
      2. In Reversion.
3. The Number and Connection of Tenants.
   1. In Severalty.
   2. In Joint Tenancy.
   3. In Coparcenary.
   4. In Common.

* See Table III.

TABLE VII.

Blackstone's Classification of Titles.

- (*d* *) Titles.
  - By Descent.
  - By Purchase.
    - Escheat.
    - Occupancy.
    - Prescription.
    - Forfeiture.
    - Alienation.

TABLE VIII.

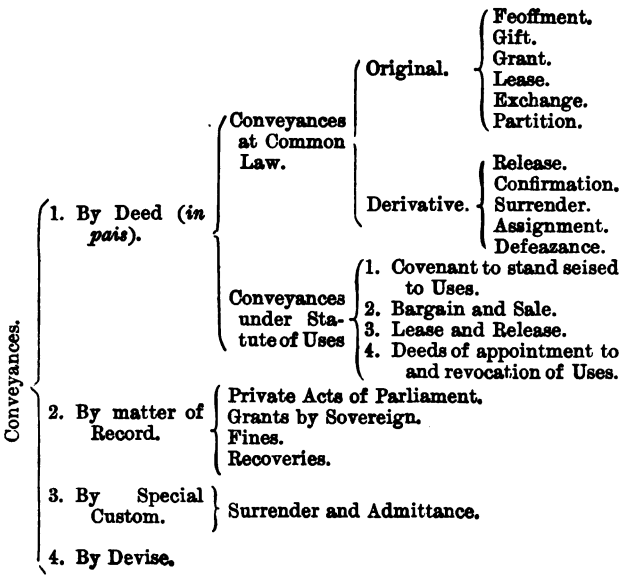
Stephen's Classification of Titles.

- (*d* *) Titles.
  - By Act of Law.
    - Descent.
    - Escheat.
      - *Propter defectum sanguinis.*
      - *Propter delictum tenentis.*
    - Custom.
    - Dower.
  - By Act of Party.
    - 1. Occupancy.
    - 2. Prescription.
    - 3. Forfeiture.
      1. Crime.
      2. Wrongful Alienation (as in Mortmain).
      3. Lapse.
      4. Simony.
      5. Non-performance of Condition.
      6. Waste.
      7. Breach of Custom.
      8. Bankruptcy.
    - Alienation (Conveyances. See Table IX.)

* See Table III.

TABLE IX.

Blackstone's Arrangement of Conveyances.



INDEX.

PRINTED BY
SPOTTISWOODE AND CO., NEW-STREET SQUARE
LONDON

LAW, HISTORY, AND POLITICAL PHILOSOPHY.

LEVIATHAN; or, The MATTER, FORME, and POWER of a COMMONWEALTH. By THOMAS HOBBES, of Malmesbury. A New Reprint. With a facsimile of the original fine engraved Title. Medium 8vo. cloth 12*s.* 6*d.*

A small edition of 250 copies only, on Dutch hand-made paper medium 8vo. 18*s.*

Students' Edition, crown 8vo. cloth, 8*s.* 6*d.*

'In matters of reprints, such as this is, it is always well to retain as much as possible the old spelling, and the old form of printing. By this means we are constantly reminded that we are reading a seventeenth century writer, and not a nineteenth; and hence students will apply more checks to their process of reasoning than they might be inclined to do if the book were printed in modern form. This is, we are glad to say, applicable to the present excellent reprint, which is issued in old spelling, and contains in the margin the figures of the pagination of the first edition.'

THE ANTIQUARY, *October* 1881.

'We have received from Mr. James Thornton, of Oxford, an excellent reprint of Hobbes's "Leviathan." The book is one which is not always easy to obtain; and a satisfactory reprint at a reasonable price may do more to advance the knowledge of Hobbes's philosophy than one of the condensed handbooks which are now extensively popular.'

WESTMINSTER REVIEW, *January*, 1882.

The ELEMENTS of LAW, NATURAL and POLITIC. By THOMAS HOBBES, of Malmesbury. The first complete and correct Edition, with a Preface and Critical Notes. By FERDINAND TÖNNIES, Ph.D. To which are subjoined selected pieces of unprinted MSS. of THOMAS HOBBES. 8vo. cloth, 7*s.* 6*d.* [*Just published.*

BEHEMOTH; or, The LONG PARLIAMENT. By THOMAS HOBBES, of Malmesbury. For the first time Edited after the Original MS., with many Additions and Corrections. By FERDINAND TÖNNIES, Ph.D. 8vo. cloth, 6*s.* [*Just published.*

'Mr. James Thornton, High Street, Oxford, who published three years ago a handsome reprint of Hobbes's *Leviathan* (now followed by a cheaper Student's Edition), will this winter issue impressions of two other of Hobbes's works, edited by Dr. Ferdinand Tönnies, which will be much more than reprints. Dr. Tönnies, to whose acute and scholarly "Remarks on the Philosophy of Hobbes" we drew attention at the time they began to appear in the *Vierteljahrschrift für wiss. Philosophie*, iii. 4 (1879, continued in iv. 1, iv. 4, and v. 2) found—as the present writer from examination of a MS. at Hardwick had also independently found—that the two treatises printed in 1650 and ever afterwards separately as *Human Nature* and *De Corpore Politico* were originally and properly parts of one single treatise entitled *The Elements of Law, Natural and Politic*, which had been circulated in written form in 1640, some months before the calling of the Long Parliament. The fact is of great significance for the true understanding of the development of Hobbes's thought (as explained in the article on Hobbes in the new edition of the *Encyclopædia Britannica*); but Dr. Tönnies farther found by a careful comparison of no less than five MSS. copies in the British Museum, with a reference also to the Hardwick MS., that the printed text of the composite treatise, as it has hitherto passed and been taken up by Molesworth into the standard edition, is faulty at many points, especially in the part that has become classical in psychological literature under the name of *Human Nature*. He has sought, then, by a painstaking collation, to

LAW, HISTORY, AND POLITICAL PHILOSOPHY—*continued.*

obtain as pure a text as possible, and this it is that will appear, before Christmas, in the first of the volumes announced. The other volums, to appear a little later, is of an interest second only to that of the first. It will give the pure text of *Behemoth*, from what Dr. Tönnies believes is the original MS. of the work, now preserved in St. John's College, Oxford. This characteristic work of Hobbes's old age, which, being held back by royal command, first saw the light surreptitiously some months before his death in 1679, and was afterwards printed with a somewhat better text in 1682, will now, for the first time, appear in its completeness, with many errors corrected and deficient passages supplied, some of which Dr. Tönnies has had trouble in restoring from the erased state in which they appear even in this MS.—erased, as he supposes, for political reasons, and therefore now of more interest to be restored. The sub-title (after *Behemoth*) will be *Or the Long Parliament*, instead of *The History of the Causes of the Civil Wars, &c.*, as heretofore. To the *first* volume will be appended an original imprint, from a collection of MSS. tracts in the British Museum, of what appears to be the earliest philosophic or scientific writing by Hobbes, in which he was groping his way to his later mechanical theory of Sense. Dr. Tönnies first drew attention to the tract in 1879, and, in now printing it for the first time, will add farther a series of illustrated extracts from the extensive MS. treatise on Optics, composed in English by the year 1643, part of which was in modified form afterwards incorporated by Hobbes in the *De Homine* (1658), and of which otherwise only two or three pages have before been printed (by Molesworth)."

EDITOR, MIND, *October* 1884.

REMARKS on the USE and ABUSE of SOME POLITICAL TERMS. By the late Right Hon. Sir GEORGE CORNEWALL LEWIS, Bart., sometime Student of Christ Church, Oxford. A New Edition, with Notes and Appendix. By Sir ROLAND KNYVET WILSON, Bart., M.A., Barrister-at-Law; Reader in Indian Law, and late Fellow of King's College, Cambridge; Author of 'History of Modern English Law.' Crown 8vo. 6*s.*

An ESSAY on the GOVERNMENT of DEPENDENCIES. By the late Right Hon. Sir GEORGE CORNEWALL LEWIS, Bart., sometime Student of Christ Church, Oxford. A New Reprint. 8vo. cloth, 10*s.* 6*d.* [*Just published.*

QUESTIONS and EXERCISES in POLITICAL ECONOMY, with References to Adam Smith, Ricardo, John Stuart Mill, Fawcett, Thorold Rogers, Bonamy Price, Twiss, Senior, Macleod, and others. Adapted to the Oxford Pass and Honour and the Cambridge Ordinary B.A. Examinations. Arranged and edited by W. P. EMBERTON, M.A. D.C.L., Christ Church, Oxford. Crown 8vo. cloth, 3*s.* 6*d.*

MONTENEGRO: being the Stanhope Prize Essay for 1884. By WILLIAM CARR, Commoner of University College, Oxford. 8vo. paper covers (106 pages), 2*s.* 6*d.*

DE CONJECTURIS ULTIMARUM VOLUNTATUM. Dissertatio pro Gradu Doctoris in Jure Civili. By WOLSELEY P. EMBERTON, D.C.L., Christ Church. 8vo. sewed (110 pages), 2*s.* 6*d.*

The RECENT DEPRESSION of TRADE, its Nature, its Causes, and the Remedies which have been suggested for it; being the Oxford Cobden Prize Essay for 1879. By WALTER E. SMITH, B.A., New College. Crown 8vo. cloth, 3*s.* 6*d.*